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TITLE 16

PRACTICE, PROCEDURE, AND COURTS

(CHAPTERS 1-17 IN VOLUME 14A; CHAPTERS 18-54 IN VOLUME 14B; CHAPTERS 90-126 IN VOLUME 16)

SUBTITLE 5. CIVIL PROCEDURE GENERALLY

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SUBTITLE 5. CIVIL PROCEDURE GENERALLY

CHAPTER 55

GENERAL PROVISIONS

SUBCHAPTER.
1. General Provisions.
2. Civil Justice Reform Act of 2003.

Subchapter 1 — General Provisions

SECTION.
16-55-114. Notices — Form — Service generally.

16-55-114. Notices — Form — Service generally.

(a)(1) The notices mentioned in this code shall be in writing and may be served by a sheriff, constable, coroner, or marshal of a town or city, whose return thereon shall be proof of the service.

(2) Notices may also be served by any person not a party or interested in the action or proceeding, whose affidavit shall be proof of the service, or by acknowledgment thereon in writing by the party upon whom served.

(b) The service of a notice shall be by giving a copy to the person to whom it is directed, or if he or she cannot be found at his or her usual place of abode, by leaving a copy there with a person over the age of sixteen (16) years residing in the same family with him or her, or if no such person is there, then by affixing a copy to the front door of the place of abode. If the person to whom the notice is directed cannot be found and has no known place of abode in this state, the notice may be served by delivering a copy to his or her attorney.

(c) The return of the officer or the affidavit of the person who served the notice shall state the time and manner of the service. If a copy of the notice is not given to the person to whom it is directed, the return or affidavit shall state the facts authorizing the manner of service pursued.

History. Civil Code, §§ 706, 707; C. & M. Dig., §§ 1327, 1328; Pope's Dig., §§ 1552, 1553; A.S.A. 1947, §§ 27-1203, 27-1204.

Publisher's Notes. This section is being set out to reflect a gender neutralization change in (b).

Subchapter 2 — Civil Justice Reform Act of 2003

SECTION.
16-55-206. Standards for award of punitive damages.

RESEARCH REFERENCES

Ark. L. Notes. Leflar, The Civil Justice Reform Act and the Empty Chair, 2003 Ark. L. Notes 67.

16-55-201. Modification of joint and several liability.

RESEARCH REFERENCES

Ark. L. Rev. Legislative Note, Arkansas's Civil Justice Reform Act of 2003: Who's Cheating Who?, 57 Ark. L. Rev. 651.

Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

Phantom Parties and Other Practical Problems with the Attempted Abolition of Joint and Several Liability, 60 Ark. L. Rev. 437.

CASE NOTES

Analysis

Constitutionality.
Construction.

Constitutionality.

Allegedly injured driver brought suit against another motorist, who then brought suit against a third party; the jury determined that the third party was 100 percent at fault. The allegedly injured driver attacked the constitutionality of this section and § 16-55-212; however, the supreme court refused to consider the arguments because the supreme court considered the matter to be moot. Shipp v. Franklin, 370 Ark. 262, 258 S.W.3d 744 (2007).

Construction.

Civil Justice Reform Act (CJRA), § 16-55-201 et seq., pertains to fault apportionment in a general way, and the Arkansas Comparative Fault Act, § 16-64-122, specifically defines fault and identifies whose fault can be apportioned. Because these two provisions address the same subject matter, it is reasonable to conclude that the general terms of the CJRA are intended to be subject to the specific terms of the Arkansas Comparative Fault Act. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Civil Justice Reform Act, § 16-55-201 et seq., can not be interpreted to permit a jury to apportion fault in a tort suit to an immune nonparty employer because doing so would render the statute unconstitutional: (1) such an interpretation would violate Ark. Const., Art. 4, § 2, which bars the state legislature from encroaching on the Arkansas Supreme Court's authority to supervise court procedure; and (2) such an interpretation would violate the employer's fundamental constitutional rights because § 11-9-105(a), the exclusivity provision of the Arkansas Workers' Compensation Act, § 11-9-101 et seq., deprives courts of subject matter jurisdiction over employers and protects employers from liability with regard to claims arising from a covered worker's employment-related injuries. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Conversion does not necessarily involve damage to property, which would bring it within the reach of the statute and therefore, the Civil Justice Reform Act of 2003 (CJRA), codified at §§ 16-55-201 — 16-55-220, does not automatically apply to actions under § 18-60-102; the CJRA clearly evinces an intent to alter the common law regarding joint and several liability for the causes of action listed, such as personal injury or property damage, but it does not, however, display such an intent regarding causes of action involving the conversion of property, and thus, the trial court did not err in finding the company, owner, and related individual jointly and severally liable with the business and business owner and with each other for the value of the landowner's timber. Shamlin v. Quadrangle Enters., 101 Ark. App. 164, 272 S.W.3d 128 (2008).

16-55-202. Assessment of percentages of fault.

CASE NOTES

Analysis

Constitutionality.
Application.
Interpretation.

Constitutionality.

Eastern District of Arkansas, Western Division, district court did not have to address a constitutional challenge to this section, the nonparty notice provision of the Civil Justice Reform Act (CJRA), § 16-55-201 et seq., because the CJRA could be plausibly interpreted to comply with the United States and Arkansas Constitutions and to conform with the Arkansas Workers' Compensation Act (WCA), § 11-9-101 et seq., and the Arkansas Comparative Fault Act (CFA), § 16-64-122. Pursuant to the canon of constitutional avoidance, the district court would not rule on the constitutionality of this section because doing so was not absolutely necessary. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

This section is not an unconstitutional

intrusion on the rule-making authority of the Supreme Court of Arkansas, it must be interpreted based on its plain terms, and it clearly allows juries to consider the fault of employers and other non-parties in tort suits, including products liability suit, without restriction and regardless of whether the employer or non-party could be directly joined in the suit: (1) the fact that an employer may be protected from being sued under the Arkansas' Workers' Compensation Act, based on its payment of workers' compensation and medical benefits to an injured worker, does not preclude a jury from considering whether the employer is at fault or is partially at fault for the accident giving rise to the worker's injuries; (2) the Eastern District of Arkansas, Pine Bluff Division, district court respectively disagrees with a prior judge's holding, in Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007), that subsection (a) of this section applies only to persons or entities that can be joined in the action by a cross-claim or third party claim and that subdivision (b)(2) of this section applies only to cross-claimed co-defendants that have settled before trial; and (3) this section does not present any constitutional concerns because under the Arkansas Civil Justice Reform Act, of which this section is a part, a designated non-party is not subject to any liability for its fault, therefore that party does not need to be served under Ark. R. Civ. P. 4, and the non-party will receive sufficient notice and protection pursuant to the discovery process that results when a notice under this section is filed. Bohannon v. Johnson Food Equip., Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 45273 (E.D. Ark. June 9, 2008).

This section was unconstitutional and conflicted with Ark. Const., Art. 4, § 2 and Ark. Const., Amend. 80, § 3 because rules regarding pleading, practice, and procedure were solely the responsibility of the supreme court; the nonparty-fault provision bypassed the rules of pleading, practice and procedure by setting up a procedure to determine the fault of a nonparty and mandating the consideration of that nonparty's fault in an effort to reduce a plaintiff's recovery. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

In a products liability action by an injured worker against the manufacturer of a defective chemical tank, the district court appropriately declined to allow the jury to assign a percentage of fault to the worker's employer, a nonparty, because the nonparty-fault provision in this section had been declared unconstitutional. McCoy v. Augusta Fiberglass Coatings, 593 F.3d 737 (8th Cir. 2010).

Application.

While a products liability defendant could issue a nonparty notice under subdivision (b)(2) of this section with regard to a nonparty equipment manufacturer, it could not issue an apportionment of damages notice under subdivision (b)(2) of this section with regard to an injured worker's employer and coemployee: (1) the purpose of the notice under this section was to allow an apportionment of liability with regard to the injured worker's damages; (2) a notice under this section could only be used with regard to an individual or entity that could be made a party to the suit by way of cross or third party claims; (3) defendant could file a notice under this section against the manufacturer, provided it filed a third party complaint and brought the manufacturer in as a party to the suit; and (4) defendant could not file a notice under this section against the employer or the coemployee because they were statutorily immune pursuant to § 11-9-105(a), the exclusive remedies provision of the Workers' Compensation Act, § 11-9-101 et seq. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Motion to strike the notice of intent to assert non-party fault, which was filed by defendants who were sued by an injured worker in a products liability suit, was denied. By it plain terms, this section allowed defendants to request that the jury to consider the fault of the worker's employer and a non-party manufacturer of a component used in the chicken processing machine that was the focus of the suit, and it did not matter that the employer could not be directly sued in the suit, based on the exclusivity provision of Arkansas' Workers' Compensation Act, or that the manufacturer had not been made a party in the suit or served under Ark. R. Civ. P. 4, as no liability would be imposed, even if the jury found the employer or the manufacturer to be at fault pursuant to this section. Bohannon v. Johnson Food

Equip., Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 45273 (E.D. Ark. June 9, 2008).

Interpretation.

Nonparty notice requirements set out in subdivision (b)(2) of this section apply in addition to state civil procedure rules. This section should be interpreted as being compatible with § 16-64-122(a), which limits the apportionment of fault to an individual or entity from whom the claiming party seeks to recover damages, which includes individuals and entities that are subject to being brought into a suit pursuant to a cross or third party claim under Ark. R. Civ. P. 13 and 14, but excludes nonparties who are otherwise immune from suit, including employers who are immune pursuant to § 11-9-105(a), the exclusive remedies provision of the Workers' Compensation Act, § 11-9-101 et seq. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

16-55-203. Increase in percentage of several share.

CASE NOTES

Uncollectable Judgment.

Court rejected a tractor manufacturer's claim that the executor of a decedent's estate fraudulently joined a non-diverse tractor seller in her tort action against the manufacturer and the seller and remanded the executor's action to state court because (1) the claim against the seller was based on § 4-86-102, and the court determined that the Arkansas Supreme Court would find that the seller, a corporation with a revoked charter, could be sued; (2) there was no basis for concluding that the state of the seller's citizenship would be changed by revocation of its charter as the seller had been incorporated by the State of Arkansas, and to the extent it had any citizenship, it was a citizen of the State of Arkansas under 28 U.S.C.S. § 1332(c)(1); and (3) while the seller might be judgment-proof, but that did not dictate a finding that the executor had no intention to take a judgment against it as there might be liability insurance or other assets from which a judgment could be collected, in spite of the seller's corporate status, and even with the virtual abolition of joint liability under Arkansas law, an uncollectible judgment against one defendant might serve to increase the amount collectible on a judgment against another defendant pursuant to this section. Davis v. CNH Am. LLC, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 25774 (W.D. Ark. Mar. 17, 2008).

16-55-206. Standards for award of punitive damages.

In order to recover punitive damages from a defendant, a plaintiff has the burden of proving that the defendant is liable for compensatory damages and that either or both of the following aggravating factors were present and related to the injury for which compensatory damages were awarded:

(1) The defendant knew or ought to have known, in light of the surrounding circumstances, that his or her conduct would naturally and probably result in injury or damage and that he or she continued the conduct with malice or in reckless disregard of the consequences, from which malice may be inferred; or

(2) The defendant intentionally pursued a course of conduct for the purpose of causing injury or damage.

History. Acts 2003, No. 649, § 9.

Publisher's Notes. This section is being set out to reflect a grammatical correction.

CASE NOTES

Analysis

In General.
Conduct Not Warranting Punitive Damages.
Relevant Evidence.

In General.

Where an insurance carrier first sought to compel arbitration, then filed for declaratory relief, and where it allegedly instructed its appraisers to deny or limit the value of hail claims, the insurer was granted judgment dismissing a claim for fraudulent misrepresentation, but claims for bad faith and punitive damages survived. Moss v. Am. Alternative Ins. Corp., — F. Supp.2d —, 2006 U.S. Dist. LEXIS 80329 (Nov. 1, 2006).

Conduct Not Warranting Punitive Damages.

Where plaintiff retailer sued defendant supplier on claims of fraud and deceptive trade practices in connection with the supplier's refusal to honor its rebate program for the retailer's customers, and the claims requiring any knowing or intentional wrongful act failed, and no reasonable jury could find that the supplier acted with malice or an intent to harm the retailer, the retailer was not entitled to pursue punitive damages under this section, especially since the standard under this section had to be met by clear and convincing evidence as required by § 16-55-207. Curtis Lumber Co. v. La. Pac. Corp., 618 F.3d 762 (8th Cir. 2010).

Relevant Evidence.

In a negligence case, a trial court erred by granting a motion in limine and excluding evidence of prior driving while intoxicated offenses because they were relevant under Ark. R. Evid. 401 to the determination of whether punitive damages under this section were warranted. Yeakley v. Doss, 370 Ark. 122, 257 S.W.3d 895 (2007).

16-55-207. Burden of proof for award of punitive damages.

CASE NOTES

Analysis

In General.
Burden of Proof.

In General.

Where an insurance carrier first sought to compel arbitration, then filed for declaratory relief, and where it allegedly instructed its appraisers to deny or limit the value of hail claims, the insurer was granted judgment dismissing a claim for fraudulent misrepresentation, but claims for bad faith and punitive damages survived. Moss v. Am. Alternative Ins. Corp., — F. Supp.2d —, 2006 U.S. Dist. LEXIS 80329 (Nov. 1, 2006).

Burden of Proof.

Where plaintiff retailer sued defendant supplier on claims of fraud and deceptive trade practices in connection with the supplier's refusal to honor its rebate program for the retailer's customers, and the claims requiring any knowing or intentional wrongful act failed, and no reasonable jury could find that the supplier acted with malice or an intent to harm the retailer, the retailer was not entitled to pursue punitive damages under § 16-55-206, especially since § 16-55-206' s standard had to be met by clear and convincing evidence as required by this section. Curtis Lumber Co. v. La. Pac. Corp., 618 F.3d 762 (8th Cir. 2010).

16-55-208. Limitations on the amount of punitive damages.

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

CASE NOTES

Cited: Holiday Inn Franchising v. Hotel Assocs., 2011 Ark. App. 147, — S.W.3d — (2011).

16-55-211. Bifurcated proceeding.

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

16-55-212. Compensatory damages.

CASE NOTES

Analysis

Constitutionality.
Plain Error Review.

Constitutionality.

Allegedly injured driver brought suit against another motorist, who then brought suit against a third party; the jury determined that the third party was 100 percent at fault. The allegedly injured driver attacked the constitutionality of § 16-55-201 and this section; however, the supreme court refused to consider the arguments because the supreme court considered the matter to be moot. Shipp v. Franklin, 370 Ark. 262, 258 S.W.3d 744 (2007).

Court granted plaintiff's motion challenging the Arkansas Civil Justice Reform Act of 2003, subsection (b) of this section, and allowed plaintiff to introduce evidence of the amounts billed to her for medical services necessitated by the injuries that were the subject of her lawsuit, regardless of any discount that she had received on those amounts because (1) if the Arkansas Supreme Court were considering the constitutionality of subsection (b), it would hold that subsection (b) infringed on its constitutional prerogative to prescribe rules of evidence under Ark. Const., Amend. 80, § 3, and was, therefore, unconstitutional because subsection (b) would, if enforced, work a reversal of the collateral source rule that had been recognized and approved by the Arkansas Supreme Court, yet the Arkansas Supreme Court did not "prescribe" subsection (b), and (2) the Arkansas Supreme Court would, if presented with the instant motion, find that subsection (b) violated Ark. Const., Art. V, § 32 as the Arkansas Supreme Court had held that a personal injury plaintiff was entitled, assuming a successful showing of liability, to recover the payments made (or written off) on her behalf by a collateral source, but subsection (b) would prevent her from doing that. Burns v. Ford Motor Co., 549 F. Supp. 2d 1081 (W.D. Ark. 2008).

Medical costs provision, subsection (b) of this section, violated separation of powers under Ark. Const., Art. 4, § 2 and Ark. Const., Amend. 80, § 3, because rules regarding the admissibility of evidence were within the province of the supreme court. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

Plain Error Review.

In light of the Arkansas court's decision in Johnson v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009), a district court erred by limiting the presentation of evidence relating to damages based on subsection (b) of this section, and because a court had to consider the law at the time of appeal when reviewing for plain error, the error was clear. But the error did not affect plaintiff parents' substantial rights; the objectionable portions of the closing argument related to the failure of plaintiffs to support their claim for damages, as well as any evidence presented concerning the financial aspects of

their daughter's care and treatment, were rendered irrelevant by the jury's verdict in favor of defendant hospital and obstetrician on liability. Csiszer v. Wren, 614 F.3d 866 (8th Cir. 2010).

16-55-213. Venue.

CASE NOTES

Analysis

Construction.
Improper Venue.

Construction.

Given the past-tense language in subdivision (a)(1) of this section referring to the county "in which a substantial part of the events or omissions giving rise to the claim occurred," the Arkansas Supreme Court construes the Arkansas General Assembly's use of the past tense in subdivisions (a)(2)(A) and (a)(3)(A) to mean that venue is fixed where the plaintiff or defendant resided at the time of the events giving rise to the cause of action. Wright v. Centerpoint Energy Res. Corp., 372 Ark. 330, 276 S.W.3d 253 (2008).

Subsection (a) of this section repealed by implication an older venue statute, § 16-60-116(a): subsection (a) established a new general rule for venue different from the former rule, creating an irreconcilable conflict, and the subsection's reference to "all civil actions" demonstrated an intent to adopt a new venue scheme. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

Because an insurer was the first party to file suit, and it chose to do so in the county in which it had its principal office, pursuant to subsection (a) of this section, a circuit judge erred by applying the doctrine of forum non conveniens under § 16-4-101(D), effectively overruling the insurer's choice of venue. Farm Bureau Mut. Ins. Co. of Ark. v. Gadbury-Swift, 2010 Ark. 6, — S.W.3d — (2010).

Subsection (e) of this section was constitutional under Ark. Const. Art. 4, § 2 and did not conflict with the rules of civil procedure because venue was a matter that lay within the province of the General Assembly. Clark v. Johnson Reg'l Med. Ctr., 2010 Ark. 115, — S.W.3d — (2010), rehearing denied, Clark v. Johnson, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 223 (Apr. 22, 2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 224 (Apr. 22, 2010).

Improper Venue.

Trial court properly dismissed a personal representative's wrongful death action for improper venue because under § 16-60-112(a) and subdivision (a)(3)(A) of this section, venue was proper where a tenant resided at the time of death from carbon monoxide poisoning; such an interpretation harmonized both statutes and avoided the disfavored result of repeal by implication. Wright v. Centerpoint Energy Res. Corp., 372 Ark. 330, 276 S.W.3d 253 (2008).

Where a writ of prohibition entered in the court's prior decision required the circuit court to dismiss the representative of the Arkansas consumers from the case, no basis existed for venue over the only remaining named plaintiff; venue was not proper under either subdivision (a)(3)(A) or subsection (b)(1) of this section because the remaining plaintiff was a resident of Texas. Centerpoint Energy, Inc. v. Miller County Circuit Court, 372 Ark. 343, 276 S.W.3d 231 (2008).

Dismissal for improper venue under Ark. R. Civ. P. 12(b)(3) of a complaint alleging fraud in the inducement of contract was not erroneous because forum-selection clauses designated Kansas as governing law and in both Arkansas and Kansas a party had to plead fraud in the inducement of a forum-selection clause itself to avoid its application. Provence v. Nat'l Carriers, Inc., 2010 Ark. 27, — S.W.3d — (2010).

Dismissal of a medical malpractice claim against out-of-county service providers for lack of proper venue, under Ark. R. Civ. P. 12(b)(3), was proper where the patient received treatment from providers in two different counties and, under subsection (e) of this section, each provider had to be sued in the county where the services were provided. Clark v. Johnson Reg'l Med. Ctr., 2010 Ark. 115, — S.W.3d

— (2010), rehearing denied, Clark v. Johnson, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 223 (Apr. 22, 2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 224 (Apr. 22, 2010).

16-55-216. Comparative fault.

CASE NOTES

Relation to § 16-55-202.

Section 16-55-202 is not an unconstitutional intrusion on the rule-making authority of the Supreme Court of Arkansas, it must be interpreted based on its plain terms, and it clearly allows juries to consider the fault of employers and other non-parties in tort suits, including products liability suit, without restriction and regardless of whether the employer or non-party could be directly joined in the suit. There is nothing in the Arkansas' comparative fault statute that precludes or prevents an apportionment of fault to non-parties. Bohannon v. Johnson Food Equip., Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 45273 (E.D. Ark. June 9, 2008).

CHAPTER 56

LIMITATION OF ACTIONS

Subchapter 1 — General Provisions

16-56-104. Actions with limitation of one year.

RESEARCH REFERENCES

ALR. When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of negligent act or omission. 11 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of sustaining damage or injury and other theories. 12 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Statement of rule and application of rule to providing client with allegedly negligent advice or failing to advise. 13 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to conduct of litigation and delay or inaction in conducting client's affairs. 14 A.L.R.6th 1.

Timeliness of action under medical malpractice statute of repose, aside from effect of fraudulent concealment of patient's cause of action. 14 A.L.R.6th 301.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to property, estate, corporate, and document cases. 15 A.L.R.6th 427.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to negligent misrepresentation, failure to supervise junior counsel, conflict of interest, billing disputes, and unspecified acts of negligence. 16 A.L.R.6th 653.

When statute of limitations begins to run in case of dental malpractice. 17 A.L.R.6th 159.

CASE NOTES

Slander.

Employee's complaint, filed on January 24, 2008, alleged that the slanderous statements were made on or about January 15, 2006; because the complaint was filed more than one year after the occurrence of the allegedly slanderous statements, the employee's defamation claim against the partnership was barred by the statute of limitations. Roeben v. BG Excelsior Ltd. P'ship, 2009 Ark. App. 646, — S.W.3d — (2009), rehearing denied, Roeben v. Sneed, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 919 (Nov. 11, 2009), rehearing denied, Roeben v. Snellgrove, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 917 (Nov. 11, 2009).

16-56-105. Actions with limitation of three years.

RESEARCH REFERENCES

ALR. When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of negligent act or omission. 11 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of sustaining damage or injury and other theories. 12 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Statement of rule and application of rule to providing client with allegedly negligent advice or failing to advise. 13 A.L.R.6th 1.

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When statute of limitations begins to run in case of dental malpractice. 17 A.L.R.6th 159.

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

CASE NOTES

Analysis

Applicability.
Civil Rights.
Commencement.
Fraud and Deceit.
Insurance.
Malpractice.
Occurrence Rule.
Service of Process.
Tolling of Statute.
Torts.

Trespass.

Applicability.

Specific statute under the Time-Share Act (§ 18-14-403) controlled plaintiff time-share owners' claims against defendant developers, as opposed to the general limitations statute (§ 16-56-105); had the court adopted the developers' argument, it would have terminated the owners' right to seek relief before any injury was known to them, which was contrary to the General Assembly's intention to protect consumers under the Act. Office of Child Support Enforcement v. Pyron, 363 Ark. 521, 215 S.W.3d 637 (2005).

Employee's ERISA claims for benefits under 29 U.S.C.S. § 1132(a), (e)(1), and (f); penalties under § 1132(c)(1); and breach of fiduciary duty under 29 U.S.C.S. § 1105(a) and (b), were dismissed because (1) the three-year statute of limitations set forth in subdivision (3) of this section applied to the employee's claim for penalties, the employee requested the plan summary in December 2001 and again in January 2002 but waited until April 2005 to make further inquiries and another year to file a complaint, and the employee did not act with "due diligence," to enforce her rights so she was not entitled to equitable tolling; (2) with regard to the employee's long-term disability (LTD) claim, the employee knew by December 2001 that her short-term (STD) claim had been denied, such denial served as notification to the employee that no more disability benefits would be approved, the employee should have known that LTD benefits were included and should have taken reasonable steps to enforce her claims, and the employer's failure to send the employee a plan summary did not excuse a four-year delay, so the three-year statute of limitation was not equitably tolled, and the employee's LTD claim was barred; (3) the employee's claim based on the employer's breach of fiduciary duty was also made too late because under the ERISA's statute of limitations, such claims had to be brought within three years under 29 U.S.C.S. § 1113(2); and (4) defendant's motion for judgment on the pleadings with regard to the employee's claim for STD benefits was construed as one for summary judgment and was granted because although the five-year limitations period set forth in § 16-56-111 applied to the claim, the statute of limitations was tolled because the amended claim for STD benefits related back to the original complaint under Fed. R. Civ. P. 15(c)(2), the employer offered an affidavit and documentation of its STD payments to the employee, and the employee did not respond to the employer's offer of proof. Gonser v. Cont'l Cas. Co., 515 F. Supp. 2d 929 (E.D. Ark. 2007).

Defendants' motion to dismiss plaintiffs' claims for trade secret misappropriation under § 4-75-601, intentional interference with contractual relationships or business expectancies, fraud, unjust enrichment, and civil conspiracy was denied because there were fact issues as to whether plaintiffs' claims accrued within the applicable three-year statute of limitations set forth in § 4-75-603 and this section and whether the application of the doctrine of fraudulent concealment was appropriate, and further, plaintiffs' allegations were sufficient to withstand a motion to dismiss. Roach Mfg. Corp. v. Northstar Indus., 630 F. Supp. 2d 1004 (E.D. Ark. 2009).

Civil Rights.

Claims parents filed under 42 U.S.C.S. § 1983, alleging, inter alia, that a school district and a vice principal committed sex discrimination and violated their son's rights under the U.S. Constitution when they failed to protect their son from attacks by other students, were not necessarily barred by the three-year statute of limitations contained in this section because some of the incidents they described in their complaint occurred more than three years before they filed their lawsuit. The parents alleged persistent harassment and discrimination which, over the course of time, rose to the level of a constitutional violation. Wolfe v. Fayetteville Ark. Sch. Dist., 600 F. Supp. 2d 1011 (W.D. Ark. 2009).

Inmate was denied in forma pauperis status because his 42 U.S.C.S. § 1983 complaint was time-barred under the applicable state law statute of limitations. Hendrix v. Vaughn, — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 1345 (W.D. Ark. Jan. 8, 2010).

Commencement.

Trial court did not err in dismissing plaintiff's complaint for interference with

a contractual relationship or business expectancy and breach of an implied contract as the statute of limitations was three years under this section; the cause of action arose in January 1999, when defendant left plaintiff's employment, started a directly competing business and induced plaintiff's employees and customers to leave plaintiff's business, but the complaint was not filed until August 2002. Quality Optical of Jonesboro, Inc. v. Trusty Optical, L.L.C., 365 Ark. 106, 225 S.W.3d 369 (2006).

Putative father's action for breach of contract and negligence, brought after a 2003 DNA test indicated that a 1991 test had erroneous shown that he was a child's biological father, was untimely because the occurrence rule, rather than the discovery rule, applied to this section's 3-year statute of limitations. Tate v. Lab. Corp. of Am. Holdings, 102 Ark. App. 354, 285 S.W.3d 261 (2008).

Fraud and Deceit.

Summary judgment was properly awarded to bank in customer's action for conversion, negligence, breach of fiduciary duty, civil conspiracy, constructive fraud, and fraudulent concealment where the action was barred by the three-year statute of limitations; the bank did not commit any act of fraud that would toll the running of the statute of limitations. Tech. Ptnrs, Inc. v. Regions Bank, 97 Ark. App. 229, 245 S.W.3d 687 (2006).

An unattested notation on the margin of a document was insufficient to extend the maturity date of the bonds at issue, and the bonds matured at the latest in 1954 and were purchased by the holder in 1974, 20 years after their maturity date, so any remaining claims would have to have been brought before the bonds became unenforceable. The holder did not contact the bank until 1984, 30 years after the maturity date and well after any applicable statute of limitations periods; therefore, the holder was barred by the three year statute of limitations under this section from bringing any of his breach of fiduciary duty, fraud, conversion, or negligence claims. Wilkins v. U.S. Bank, N.A., 514 F. Supp. 2d 1120 (W.D. Ark. 2007).

In a case arising out of a real property transaction, a fraud action was barred by the three-year statute of limitations because the cause of action arose when a deed was executed in 1996, and there was no evidence of fraudulent concealment to toll the limitations period. Riddle v. Udouj, 99 Ark. App. 10, 256 S.W.3d 556 (2007), rehearing denied, Riddle v. Udouj, — Ark. App. —, — S.W.3d —, 2007 Ark. App. LEXIS 530 (June 20, 2007), aff'd, Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007).

Dismissal of appellant's tort action was appropriate because the action was barred by the statute of limitations. Appellant had plenty of time and the opportunity after she should have, by reasonable diligence, discovered the asserted fraud to bring suit and to counter the defense of release with the present allegation that it had been fraudulently obtained. Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007).

Agent's claim against an insurance company for making false representations was barred by the three-year statute of limitations because the limitations period began to run when the agent received a letter from the company notifying the agent that it wished to terminate the agent's contract. Gunn v. Farmers Ins. Exch., 2010 Ark. 434, — S.W.3d — (2010).

In an action by a solicitor against a contractor and others, the trial court did not err in refusing to dismiss the solicitor's fraud claim as time-barred because the relevant dates of the alleged fraud, fraudulent concealment, or the solicitor's discovery of the fraud, from which the trial court could rule on the statute-of-limitations defense as a matter of law, were not discernible from the complaint. Nobles v. Tumey, 2010 Ark. App. 731, — S.W.3d — (2010).

Insurance.

Insurance underwriter's negligence claim against its agent, arising from the agent's issuance of a general liability policy to an Alabama motel in violation of the parties' binding authority agreement, was time-barred under this section because the underwriter filed its suit more than three years after the date the agent acted negligently by issuing the policy. Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009).

Insurance underwriter's equitable indemnification claim against its agent was not time-barred under this section: (1) the

equitable indemnification claim arose from the fact that the underwriter paid settlements in two lawsuit filed against an insured motel after the agent, which had issued a general liability policy to the motel in violation of the parties' binding authority agreement, refused to provide defense and indemnification in the suits; (2) the underwriter's claim did not accrue until it actually paid to settle the suits; and (3) the equitable indemnification claim was timely asserted because the underwriter filed its suit less than three years after it tendered the settlement payments. Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009).

Malpractice.

Directing of a verdict in favor of employee on the employers' issue of accounting malpractice was inappropriate as Arkansas adhered to the "occurrence rule" and there was evidence that the employers did not accept the employee's tax advice until March 2000; if that was the case, then the action would not have been barred by the three-year statute of limitations.Morrow Cash Heating Air, Inc. v. Jackson, 96 Ark. App. 105, 239 S.W.3d 8 (2006).

Trial court properly dismissed a client's complaint against an attorney for breach of contract, deception, slander, and defamation of character because the three-year statute of limitations barred the complaint. The "gist" of the client's complaint was that the attorney failed to act diligently and timely file a proper appeal on the client's behalf; such inaction was clearly negligent. Kassees v. Guy Randolph Satterfield & Satterfield Law Firm, PLC, 2009 Ark. 91, 303 S.W.3d 42 (2009).

When the client sued the attorney in connection with the execution of a prenuptial agreement, her complaint was barred by the three-year statute of limitations for legal-malpractice claims under this section. There was no written contract to bring the action under the five-year statute of limitations set forth in § 16-56-111. Pounders v. Reif, 2009 Ark. 581, — S.W.3d — (2009).

Clients' legal malpractice suit under § 16-22-306 for failure of a law firm to properly file a medical malpractice suit was barred by the three-year statute of limitations under subdivision (3) of this section because, under the occurrence rule, the clients' legal malpractice action ran no later than three years after the last day that their medical malpractice action could have been properly instituted. Rice v. Ragsdale, 104 Ark. App. 364, 292 S.W.3d 856 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 427 (May 14, 2009).

Occurrence Rule.

Where two cities solicited bids for the construction of the wastewater facility, engineers prepared a soil report on September 30, 2001; a contractor was the successful bidder for the construction project and contracted with the cities on June 7, 2002. When the contractor filed suit against the engineers on May 24, 2005 for professional negligence in the preparation of the soil report, the circuit court correctly applied the occurrence rule to determine that the professional negligence claim against the engineers was barred by the three-year statute of limitations set forth in this section. Bryan v. City of Cotter, 2009 Ark. 457, — S.W.3d — (2009).

Service of Process.

Negligence action for a slip and fall was improperly dismissed as being barred by the three-year limitations period because, under Ark. R. Civ. P. 15(c), an amendment correcting the name of a wrong owner as defendant related back to the original complaint in that the same allegations were made and the new owner was served within 120 days, as set forth in Ark. R. Civ. P. 4(i). Bell v. Jefferson Hosp. Ass'n, 96 Ark. App. 283, 241 S.W.3d 276 (2006).

Tolling of Statute.

Three-year statute of limitations for a legal malpractice action was not tolled by fraudulent concealment due to an incorrect statement made by attorneys regarding a tax liability letter; there was no furtively planned or secretly executed acts, nor was there an affirmative act of concealment; rather, the client failed to act with reasonable diligence when he was informed of the tax liability by the State on two different times. Delanno, Inc. v. Peace, 366 Ark. 542, 237 S.W.3d 81 (2006).

Circuit court improperly granted two attorneys summary judgment on a shareholder's legal malpractice action based on subdivision (3) of this section (Repl. 2006)

where the shareholder had produced evidence that the attorneys had set up and concealed shell corporations; it was unlikely that he could have discovered the concealment of the attorneys' wrongful acts, and as a result, there was a genuine issue of fact as to whether the attorneys committed acts of fraudulent concealment that tolled the statute of limitations. Bomar v. Moser, 369 Ark. 123, 251 S.W.3d 234 (2007).

More than three years had elapsed since the commission of the alleged fraud, and thus the buyers had the burden to show that the statute of limitations in this section was tolled; however, the buyers failed to produce any evidence that the seller engaged in any act designed to conceal her alleged misrepresentation, and instead the buyers were aware of all the material facts surrounding the alleged fraud before taking possession of the land, and thus the trial court did not err in finding that the buyers' constructive fraud claim had expired. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

In a personal injury suit, when a pedestrian and his wife failed to properly serve a summons and complaint on a driver, and service was not completed within 120 days of the filing of the complaint, the complaint had to be dismissed without prejudice, but when service was not completed within the three-year statute of limitations period, the dismissal had to be with prejudice because the pedestrian and his wife failed to show fraud on the part of the driver, so the statute of limitations was not tolled. Brennan v. Wadlow, 372 Ark. 50, 270 S.W.3d 831 (2008).

Business owners' claims against auditors for fraud, constructive fraud, and professional negligence regarding a 1995 audit were time-barred by this section despite a tolling agreement signed by the auditors because the tolling agreement's purpose was to waive the statute of limitations as to claims arising out a 1994 audit and the claims with respect to the 1995 audit were not related to nor did they arise from the 1994 audit. Ernst & Young LLP v. Reid, 2010 Ark. 255, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 391 (Aug. 6, 2010).

Plaintiff's action was properly dismissed because his claims were clearly time-barred under this section and §§ 16-56-111, 4-88-115, and by failing to allege when and how he discovered defendant's alleged fraud, plaintiff failed to meet his burden under Fed. R. Civ. P. 9(b), (f) of sufficiently pleading that the doctrine of fraudulent concealment saved his otherwise time-barred claims. Summerhill v. Terminix, Inc., 637 F.3d 877 (8th Cir. 2011).

Torts.

A cause of action for contribution accrues when one joint tortfeasor pays more than his or her pro rata share of common liability; therefore, the three-year statute of limitations under this section had not yet expired due to the fact that a settlement had just been entered where an executor and his wife agreed to pay more of their fair share in a trust dispute. Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006).

Trespass.

Estate administrator's amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under subdivisions (4) and (6) of this section, the three-year statute of limitations for trespass and conversion, and § 16-56-108, the two-year statute of limitations applicable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to § 18-60-102. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

16-56-108. Recovery of statutory penalties.

CASE NOTES

Applicability.

Estate administrator's amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under § 16-56-105(4) and (6), the three-year statute of limitations for trespass and conversion, and this section, the two-year statute of limitations applicable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to § 18-60-102. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

16-56-111. Notes and instruments in writing and other writings.

CASE NOTES

Analysis

Applicability.
Attorneys.
Date of Accrual.
Debts.
Property Settlement Agreement.
Real Estate Interests.

Applicability.

Employee's ERISA claims for benefits under 29 U.S.C.S. § 1132(a), (e)(1), and (f); penalties under § 1132(c)(1); and breach of fiduciary duty under 29 U.S.C.S. § 1105(a) and (b), were dismissed because (1) the three-year statute of limitations set forth in § 16-56-105(3) applied to the employee's claim for penalties, the employee requested the plan summary in December 2001 and again in January 2002 but waited until April 2005 to make further inquiries and another year to file a complaint, and the employee did not act with "due diligence," to enforce her rights so she was not entitled to equitable tolling; (2) with regard to the employee's long-term disability (LTD) claim, the employee knew by December 2001 that her short-term (STD) claim had been denied, such denial served as notification to the employee that no more disability benefits would be approved, the employee should have known that LTD benefits were included and should have taken reasonable steps to enforce her claims, and the employer's failure to send the employee a plan summary did not excuse a four-year delay, so the three-year statute of limitation was not equitably tolled, and the employee's LTD claim was barred; (3) the employee's claim based on the employer's breach of fiduciary duty was also made too late because under the ERISA's statute of limitations, such claims had to be brought within three years under 29 U.S.C.S. § 1113(2); and (4) defendant's motion for judgment on the pleadings with regard to the employee's claim for STD benefits was construed as one for summary judgment and was granted because although the five-year limitations period set forth in this section applied to the claim, the statute of limitations was tolled because the amended claim for STD benefits related back to the original complaint under Fed. R. Civ. P. 15(c)(2), the employer offered an affidavit and documentation of its STD payments to the employee, and the employee did not respond to the employer's offer of proof. Gonser v. Cont'l Cas. Co., 515 F. Supp. 2d 929 (E.D. Ark. 2007).

Finding against the relatives in an action stemming from the relatives' default on a promissory note and security agreement previously executed was proper because the appellate court agreed with the circuit court's interpretation of the provision in the agreement to mean that the final payment, due on January 30, 2004, was to be a balloon payment of any unpaid balance on the note. Accordingly, the term "principal balance" was to include everything that remained unpaid on the date the last balloon payment came due; therefore, the damage claim included everything that remained unpaid throughout the course of the note and the circuit

court's finding that the claim was not barred by the statute of limitations was proper. Housley v. Hensley, 100 Ark. App. 118, 265 S.W.3d 136 (2007).

Pursuant to Fed. R. Civ. P. 26(b), in a purported class action case involving rental protection fees charged to customers by a rental company, the company was required to produce documents and respond to interrogatories relating to the rental agreements at issue, the corporate structure, sales requirements, tracking, and any disputes pertaining to the rental protection fee, identification of persons and departments involved in the rental protection fee policy, and identification of customers over a five-year period preceding the filing of the lawsuit, because such information was reasonably calculated to lead to discovery of evidence relevant to the class certification issues. The five-year period was chosen because the longest period of limitations that arguably applied was five years under this section. Impact, LLC v. United Rentals, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 12734 (E.D. Ark. Feb. 18, 2009).

In a nondischargeability action under 11 U.S.C.S. § 523(a)(2)(A), where the debt to which the debtors' misrepresentations related arose from a breach of a limited liability company's operating agreement, the five year statute of limitations for breach of contract stated in this section applied, not the three year period for fraud. Lewis v. Spivey (In re Spivey), 440 B.R. 539 (Bankr. W.D. Ark. 2010).

Attorneys.

When the client sued the attorney in connection with the execution of a prenuptial agreement, her complaint was barred by the three-year statute of limitations for legal-malpractice claims under § 16-56-105. There was no written contract to bring the action under the five-year statute of limitations set forth in this section. Pounders v. Reif, 2009 Ark. 581, — S.W.3d — (2009).

Date of Accrual.

Court properly determined that employee's 2002 breach of contract action against employer was barred by the five-year statute of limitations; the action accrued at the point when employee could have first maintained his action, when the employer failed to apportion settlement funds to the Federal Railroad Retirement Board in 1990. Phillips v. Union Pac. R.R., 89 Ark. App. 223, 201 S.W.3d 439 (2005).

Insurance underwriter's breach of contract claim against its agent, arising from the agent's issuance of a general liability policy to an Alabama motel in violation of the parties' binding authority agreement, was time-barred under subsection (b) of this section because the underwriter filed its suit more than five years after the agent breached its contractual duty by issuing the policy. The underwriter's cause of action accrued when the contract was breached, not when it suffered injury arising from that breach, which occurred several years later, when lawsuits covered by the policy were filed against the insured motel and the agent refused to provide defense and indemnification in those suits. Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009).

Subdivision lot owner's action for breach of restrictive covenants and a declaration that such covenants were unenforceable was barred by the applicable statute of limitations under this section, as the cause of action accrued when a golf club and a successor-in-interest to the developer of the subdivision sold the first lot that they deferred a monthly fee for, not with each deferred lot sold. Beckworth v. Diamante, 2010 Ark. App. 815, — S.W.3d — (2010).

Plaintiff's action was properly dismissed because his claims were clearly time-barred under this section and §§ 16-56-105, 4-88-115, and by failing to allege when and how he discovered defendant's alleged fraud, plaintiff failed to meet his burden under Fed. R. Civ. P. 9(b), (f) of sufficiently pleading that the doctrine of fraudulent concealment saved his otherwise time-barred claims. Summerhill v. Terminix, Inc., 637 F.3d 877 (8th Cir. 2011).

Debts.

Breach of contract claim involving a loan that was secured by a property deed was not barred by the statute of limitations because the breach claim did not accrue until just a few months before the filing of the complaint, when the lenders refused further payments and claimed the payments were merely rent because they owned the property at issue. Smith v.

Eisen, 97 Ark. App. 130, 245 S.W.3d 160 (2006).

Five-year statute of limitations for written contracts applied under this section, and the last payments on June 24, July 7, and July 10, 2004, were made within the 5-year period after the creditors filed the claims on November 28, 2007, and April 3, 2008, because the debtor's use of the cards represented an intent to perform a unilateral contract by repaying the amount charged; the issuance of the card to the debtor to be accepted by her in accordance with the terms and conditions set forth by the card member agreements or rejected by non-use was an offer; and the contract became binding when the debtor retained the card, made use of it, and thereby agreed to the terms of the written agreement. In re Pettingill, 403 B.R. 624 (Bankr. E.D. Ark. 2009).

Bank's claim upon promissory note was not barred by the statute of limitations under this section as the note maker made a payment before the bar attached and created a new starting point for the limitations period. Valley v. Helena Nat'l Bank, 2010 Ark. App. 560, — S.W.3d — (2010).

Property Settlement Agreement.

Former wife's claims in her motion for contempt that a former husband failed to comply with certain provisions in their property settlement agreement was barred by the five-year statute of limitations in this section that applied to written contracts as the settlement was an independent contract that did not merge with the divorce decree. The husband's mental health problems were not sufficient to make him insane for purposes of tolling the statute under § 16-56-116, and in any event, the wife, not the husband, was the one bringing the action. Wall v. Wall, 2011 Ark. App. 143, — S.W.3d — (2011).

Real Estate Interests.

Breach of warranty case against the sellers of real property was barred by the five-year statute of limitations because the cause of action accrued at the time of the sale, but not at the time of a court order quieting title in a portion of the property to several neighbors. The breach and constructive eviction occurred on the date of the deed. Riddle v. Udouj, 99 Ark. App. 10, 256 S.W.3d 556 (2007), rehearing denied, Riddle v. Udouj, — Ark. App. —, — S.W.3d —, 2007 Ark. App. LEXIS 530 (June 20, 2007), aff'd, Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007).

16-56-114. Judgments and decrees.

CASE NOTES

In General.

Under § 16-65-501, the dealership owner's writ of scire facias to revive a ten-year-old judgment against the partner should have been granted because the owner's 1993 judgment had not been satisfied; the partner had twice tendered the cash and stock certificates but, despite his efforts, he had been unable to extinguish his judgment debt. Carder Buick-Olds Co. v. Wooten, 2009 Ark. App. 310, 308 S.W.3d 156 (2009).

16-56-115. Limitation of actions not otherwise provided for.

CASE NOTES

Analysis

Accrual.
Breach of Warranties.
Heirship Action.
Unfair Practices Act.

Accrual.

Subdivision lot owner's action for breach of restrictive covenants and a declaration that such covenants were unenforceable was barred by the applicable statute of limitations under this section,

as the cause of action accrued when a golf club and a successor-in-interest to the developer of the subdivision sold the first lot that they deferred a monthly fee for, not with each deferred lot sold. Beckworth v. Diamante, 2010 Ark. App. 815, — S.W.3d — (2010).

Breach of Warranties.

It is clear that physical encroachments may result in a constructive eviction, and likewise, if a person builds a fence or wall completely surrounding his or her home and in so doing encloses a portion of their neighbor's yard, the record owner has been dispossessed; such an encroachment need not completely foreclose the possibility of physical entry in order to result in constructive eviction. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

Trial court properly found that buyers' claim of breach of the warranties of title and quiet enjoyment were barred by the statute of limitations under this section; there were visible fences establishing the boundary and the neighbors were using the disputed property as their own on the date of the conveyance, and thus the buyers were constructively evicted and the warranties of title and quiet enjoyment were breached as of the date of the conveyance in 1996, and the limitations period had expired when the buyers filed their complaint in 2005. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

For statute of limitation purposes under this section regarding buyers' claim of breach of the warranties of title and quiet enjoyment, the question was whether the buyers were constructively evicted from the disputed property at some point before an order was entered in a prior, separate quiet title action; the court noted that a neighbors' letter could only have put the buyers on notice of a competing claim to the land and it could not have effected an eviction if the buyers were currently in possession of the property, and while the trial court's reasoning was flawed in this regard, the court could affirm if the trial court reached the correct decision, which it did, that the breach of warranty claim was time-barred. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

Five-year statute of limitations for breach of warranty of title under this section began to run at the time defendants cut off electricity to a life estate grantee's home located on the property, not at an earlier date when she was unable to use the entire 463 acres of the property. Jackson v. Smith, 2010 Ark. App. 681, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 833 (Dec. 1, 2010).

Heirship Action.

In a case where heirship was being determined, the action was not barred by the limitations periods in § 18-61-101 and this section because the time period did not begin to run until a pecuniary consequence arose; there had been no demand for the trust property that would have triggered the limitations period. Moreover, the case was filed within the limitations period if it began to run when mineral leases were executed. Scroggin v. Scroggin, 103 Ark. App. 144, 286 S.W.3d 758 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 743 (Oct. 22, 2008), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 502 (Mar. 19, 2009).

Unfair Practices Act.

Circuit court correctly applied the five-year statute of limitations to claims under the Arkansas Franchise Practices Act, § 4-72-201 et seq., as neither § 16-56-105 nor this section applied; five-year statute applied because the Arkansas Franchise Practices Act contained no statute of limitations. Miller Brewing Co. v. Ed Roleson, Jr., Inc., 365 Ark. 38, 223 S.W.3d 806 (2006).

16-56-116. Persons under disabilities at time of accrual of action.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments: Charitable-Immunity Doctrine — Direct-Action Statute, 59 Ark. L. Rev. 199.

CASE NOTES

Analysis

In General.
Insanity.
Minority.
Statute of Limitations.
Tolling.

In General.

Where the Boy Scouts of America (BSA) failed to inform parents and their injured child about the BSA's insurance coverage and parents failed to include insurer in the suit before the statute of limitations ran, notice was imputed to the insurer; thus, under the circumstances, the second amended complaint related back to the filing of the original complaint and was not barred by the statute of limitations. Low v. Ins. Co. of N. Am., 364 Ark. 427, 220 S.W.3d 670 (2005).

Insanity.

From an alleged victim's suit against his former scoutmaster and several others alleging damages resulting from sexual abuse he suffered 30 years before when he was 11 and 12 years old, judgment in favor of the scoutmaster was proper as repressed memory syndrome did not toll the statute of limitations under this section, and the alleged victim failed to show that the other parties fraudulently concealed facts, or even that they knew, about the scoutmaster's sexual abuse of the alleged victim. Barre v. Hoffman, 2009 Ark. 373, 326 S.W.3d 415 (2009).

Minority.

Where child did not fall within either of the two exceptions for a minor's cause of action under § 16-114-203(c), the complaint brought on his behalf was barred by the two-year statute of limitations in § 16-114-203. Shelton v. Fiser, 340 Ark. 89, 8 S.W.3d 557 (2000).

Statute of Limitations.

Because a general statute must yield when there is a specific statute involving the particular subject matter, in a minor child's medical malpractice action, the two-year statute of limitations in § 16-114-203 applied rather than the three-year statute of limitation in this section. Shelton v. Fiser, 340 Ark. 89, 8 S.W.3d 557 (2000).

Tolling.

Dismissal of the patient's medical malpractice claim was appropriate, in part because her argument that § 16-56-116 allowed the tolling of the statute of limitations for those with disabilities was not presented to the circuit court. Thus, it could not be considered for the first time on appeal. Collins v. St. Vincent, 98 Ark. App. 190, 253 S.W.3d 26 (2007), review denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 422 (May 10, 2007), cert. denied, Thompson v. St. Vincent Infirmary Med. Ctr., — U.S. —, 128 S. Ct. 233, 169 L. Ed. 2d 174 (2007).

Former wife's claims in her motion for contempt that a former husband failed to comply with certain provisions in their property settlement agreement was barred by the five-year statute of limitations in § 16-56-111 that applied to written contracts as the settlement was an independent contract that did not merge with the divorce decree. The husband's mental health problems were not sufficient to make him insane for purposes of tolling the statute under this section, and in any event, the wife, not the husband, was the one bringing the action. Wall v. Wall, 2011 Ark. App. 143, — S.W.3d — (2011).

16-56-125. Actions against tortfeasors whose identity is unknown.

CASE NOTES

Dismissal with Prejudice.

Circuit court erred in dismissing with prejudice a mother's action against doctors because it erroneously held that the earlier dismissal of the mother's complaint had been with prejudice once the mother appealed because the mother refiled her action in the proper venue within one year of the earlier dismissal of the prior action becoming final. Orr v. Calicott, 2009 Ark. App. 857, — S.W.3d — (2009), superseded, Orr v. Hudson, 2010 Ark. 484, — S.W.3d — (2010).

16-56-126. Commencement of new action or filing mandate after nonsuit or arrest or reversal of judgment.

CASE NOTES

Analysis

Applicability.
Complaint Amended.
Dismissal with Prejudice.
Dismissal Without Prejudice.
Entitlement to Privilege.
Nonsuit.
Substitution.
Tolling Statute of Limitations.

Applicability.

Subdivision (a)(1) of this section did not apply in customer's action against bank for conversion, breach of fiduciary duty, conspiracy, constructive fraud, and fraudulent concealment where the 2002 dismissal of customer's action against its sales manager remained in effect for over one year; the bank was not made a party to any valid lawsuit until 2004. Tech. Ptnrs, Inc. v. Regions Bank, 97 Ark. App. 229, 245 S.W.3d 687 (2006).

Excessive force and deliberate indifference to excessive force claims asserted against two county deputy sheriffs in their individual capacities were time-barred because they were asserted more than three years after the incident giving rise to the claims occurred. This section did not apply to toll the statute of limitations with regard to the claims because in his prior 42 U.S.C.S. § 1983 suit, which was nonsuited, plaintiff did not specifically indicate that he was attempting to hold the sheriffs liable in their individual capacities and, therefore, they were deemed to have been sued in their official capacities only in that suit. Baker v. Chisom, 501 F.3d 920 (8th Cir. 2007), cert. denied, 554 U.S. 902, 128 S. Ct. 2932, 171 L. Ed. 2d 864 (2008).

Savings statute was applicable entitling the patient to refile his medical malpractice suit because his initial attempted service on the surgeon was proper; the return receipt was signed by the surgeon's secretary and the patient not only served the surgeon by certified mail, return receipt requested, restricted delivery, he further sent interrogatories certified mail, return receipt requested, restricted delivery and the secretary signed for those documents as the surgeon's agent. McCoy v. Montgomery, 370 Ark. 333, 259 S.W.3d 430 (2007).

Arkansas savings statute does not apply in workers' compensation cases. Single Source Transp. v. Kent, 99 Ark. App. 153, 258 S.W.3d 416 (2007).

While it could be considered that the employee suffered a nonsuit as required in subdivision (a)(1) of this section, the statute did not apply because it also required that the employee's slander action against the partnership be commenced within the time respectively prescribed for slander claims, which was one year, as provided in § 16-56-104(3). The employee did not allege defamation against the partnership in either his discrimination complaint, his third-party complaint, or his amended complaint. Roeben v. BG Excelsior Ltd. P'ship, 2009 Ark. App. 646, — S.W.3d — (2009), rehearing denied, Roeben v. Sneed, — Ark. App. —, — S.W.3d —, 2009 Ark.

App. LEXIS 919 (Nov. 11, 2009), rehearing denied, Roeben v. Snellgrove, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 917 (Nov. 11, 2009).

Complaint Amended.

Following a voluntary nonsuit, the filing of an amended complaint satisfied the requirement of the savings statute, codified at subdivision (a)(1) of this section, that a new action be commenced within one year where the amended complaint was filed within the one-year period and timely service was completed as required by Ark. R. Civ. P. 4. Tucker v. Sullivant, 2010 Ark. 170, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 291 (May 20, 2010).

Dismissal with Prejudice.

Court rejected parents' claim that dismissal of their amended medical malpractice claim against hospital and doctor for failure to comply with the service requirements of Ark. R. Civ. P. 4 should have been without prejudice; the parents' failure to comply with the service of process requirements resulted in a failure to commence their medical malpractice action and effectuate the one-year savings provision in this section, Posey v. St. Bernard's Healthcare, Inc., 365 Ark. 154, 226 S.W.3d 757 (2006).

Dismissal Without Prejudice.

Because an accident victim filed his complaint during the limitations period and served it timely, albeit imperfectly, under Ark. R. Civ. P. 4, he was entitled to the one-year grace period provided by the saving statute, subdivision (a)(1) of this section, and therefore the case was properly dismissed without prejudice, allowing him to refile. McCoy v. Bodiford, 2010 Ark. App. 152, — S.W.3d — (2010).

Entitlement to Privilege.

Because this savings statute protected those who in good faith filed and timely served an action who would otherwise suffer a complete loss of relief on the merits due to a procedural defect, plaintiff's complaint was timely filed, and despite service being defective, the action was commenced for purposes of the savings statute. Rettig v. Ballard, 2009 Ark. 629, — S.W.3d — (2009), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 49 (Jan. 21, 2010).

Nonsuit.

Dismissal of the patient's medical malpractice claim was appropriate because it was untimely under § 16-56-126(a)(1) since Ark. R. Civ. P. 41(a)(1) stated that the one-year period began when the circuit court entered an order granting the non-suit; additionally, Ark. R. Civ. P. 58 did not require courts to notify parties of the entry of an order of judgment. The patient also offered no proof that the hospital's attorney defrauded her or intended to defraud her in any way when he told her that the signing date was the date from which the statute would run. Collins v. St. Vincent, 98 Ark. App. 190, 253 S.W.3d 26 (2007), review denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 422 (May 10, 2007), cert. denied, Thompson v. St. Vincent Infirmary Med. Ctr., — U.S. —, 128 S. Ct. 233, 169 L. Ed. 2d 174 (2007).

Substitution.

In a claim brought against the suppliers of a pain pump, a dismissal was proper because a wife, as a patient's administratrix, did not seek substitution under Fed. R. Civ. P. 25 prior to a nonsuit of the case when it was pending in federal court. Therefore, the patient and his wife did not receive the benefit of this section. Wilson v. Lincare, Inc., 103 Ark. App. 329, 288 S.W.3d 708 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 723 (Apr. 2, 2009).

Tolling Statute of Limitations.

Trial court erred in granting state's motion to strike appellant's motion to dismiss a forfeiture action because, after voluntarily dismissing its first forfeiture complaint for failure to complete service of process, the state neglected to toll the limitations period to invoke the one-year savings statute because it did not file the forfeiture complaint within the 120-day period required by § 5-64-505(3). Mitchell v. State, 94 Ark. App. 304, 229 S.W.3d 583 (2006).

Circuit court properly dismissed a patient's negligent treatment case against a chiropractor without prejudice to being refiled where the patient had commenced his case under Ark. R. Civ. P. 3 by completing timely, but defective, service, and thus, he was entitled to the shelter of subdivision (a)(1) of this section. Clouse v.

Tu, 101 Ark. App. 260, 274 S.W.3d 344 (2008), review denied, Clouse v. Ngau Van Tu, 2008 Ark. LEXIS 421 (Ark. June 19, 2008).

Cited: Wright v. City of Little Rock, 366 Ark. 96, 233 S.W.3d 644 (2006); Recinos v. Zelk, 369 Ark. 7, 250 S.W.3d 221 (2007); Barrows v. City of Fort Smith, 2010 Ark. 73, — S.W.3d — (2010).

CHAPTER 58

COMMENCEMENT OF ACTION — PROCESS

16-58-120. Method of service — Resident and nonresident defendants out of state — Secretary of State agent.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

CASE NOTES

Applicability.

As appellant failed to personally serve appellee and thus did not attach a return receipt to the writ of process and file it in the clerk's office, it could not avail itself of the long-arm statute. Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 451, — S.W.3d — (2010).

Appellant could not avail itself of the long-arm statute as this section did not apply to in rem proceedings like appellant's quiet title action. Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 451, — S.W.3d — (2010).

16-58-121. Method of service — Nonresident or absent owner, chauffeur, driver, or operator — Survival of action.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-122. Method of service — Owner or operator of motor buses or trucks.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-123. Method of service — Owner or officer of steamboat or watercraft.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-124. Method of service — Corporations.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-125. Method of service — Corporate agent at branch office.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-126. Method of service — Corporations — Secretary of State.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-127. Method of service — Foreign corporations.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

CASE NOTES

Agent.

Debtor who had initiated an adversary proceeding to determine dischargeability of a student loan obligation was entitled to default and a default judgment because the debtor had complied with the service of process requirements of Fed. R. Bankr. P. 7004 and Ark. R. Civ. P. 4(d)(5) when the debtor served an amended summons and complaint on the creditor's designated agent. The debtor was not also required to service process on the creditor itself as well as the agent. Weston v. Ed Fin. Servs., LLC (in re Weston), 398 B.R. 325 (Bankr. E.D. Ark. 2008).

16-58-130. Constructive service — Warning orders.

CASE NOTES

Action to Quiet Title.

As more than publication of a warning order is required to subject a non-resident's interest in land to the jurisdiction of a court in an action to quiet title, appellant's compliance with this section was not sufficient for such a proceeding. Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 451, — S.W.3d — (2010).

CHAPTER 59

LIS PENDENS

16-59-101. Filing of notice required to constitute constructive notice of pending action.

CASE NOTES

Analysis

Complaint for Money Judgment.
Effect of Filing.

Complaint for Money Judgment.

District court ordered the U.S. Government to remove a notice of lis pendens it filed against defendant's residence, pursuant to this section, after defendant was indicted on charges alleging that he conspired with another person to commit mail fraud, in violation of 18 U.S.C.S. § 1341. Although the indictment charging defendant with conspiracy to commit mail fraud included a forfeiture allegation in the amount of $1,811,490 and gave notice of the Government's intent to seek substitute property, pursuant to 21 U.S.C.S. § 853(p), in the event $1.8 million in cash could not be located with due diligence, the Government's notice of lis pendens was improper under this section because the Government was using defendant's residence as a substitute for a money judgment it was seeking, and this section did not apply to actions seeking money judgments. United States v. Jewell, 556 F. Supp. 2d 962 (E.D. Ark. 2008).

Effect of Filing.

Trustee's quiet title suit under the Quiet Title Act, 28 U.S.C.S. § 2409a, was dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because the United States' sovereign immunity had not been waived, as the trustee had not timely filed her suit within the 12-year time limit set out in 28 U.S.C.S. § 2409a(g). Pursuant to this section, a lis pendens that the United States filed in 1964 gave the trustee and/or the trust beneficiaries, who had purchased the property at a 1990 tax sale, constructive notice that a cloud on the title existed, and a visit to the disputed property would have provided actual notice of the United States' claim to the property, given that a levee with a paved road had been constructed on it and the remainder of it was being used as a state-operated wildlife refuge. Kruger v. United States, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 42909 (E.D. Ark. June 12, 2007).

Lis pendens filed under § 16-59-101 et seq. against defendant's residence, which was allegedly subject to forfeiture as substitute property in a criminal case against defendant, was not a seizure or a legal restraint of the property; 21 U.S.C.S. § 853(e) therefore did not prohibit the government from filing the lis pendens prior to conviction. United States v. Jewell, 538 F. Supp. 2d 1087 (E.D. Ark. 2008).

Materials supplier that filed a materialman's lien on property after a bank had filed a foreclosure complaint and a lis pendens on the same property was subject to the lis pendens because the supplier did not obtain an interest in the property prior to the filing of the lis pendens. Nat'l Home Ctrs., Inc. v. Coleman, 373 Ark. 246, 283 S.W.3d 218 (2008).

CHAPTER 60

VENUE

SUBCHAPTER.
1. General Provisions.

Subchapter 1 — General Provisions

16-60-101. Actions brought where subject of action situated.

CASE NOTES

Writ of Prohibition.

In a case in which respondents filed a lawsuit in White County, Arkansas, against the Arkansas Game and Fish Commission (AGFC), seeking an injunction enjoining the AGFC from leasing, conveying, encumbering, or otherwise transferring mineral rights to certain land, a writ of prohibition that was sought by the AGFC was not appropriate. This section and § 16-60-103 provided the circuit court with the authority to conclude that venue was proper in White County. Ark. Game Fish Comm'n v. Mills, 371 Ark. 317, 265 S.W.3d 760 (2007).

16-60-103. Actions which must be brought in Pulaski County.

The following actions must be brought in the county in which the seat of government is situated:

(1) All civil actions in behalf of the state, or which may be brought in the name of the state, or in which the state has or claims an interest, except as provided in § 16-106-101;

(2) All actions brought by state boards, state commissioners, or state officers in their official capacity, or on behalf of the state, except as provided in § 16-106-101;

(3) All actions against the state and all actions against state boards, state commissioners, or state officers on account of their official acts, except that if an action could otherwise be brought in another county or counties under the venue laws of this state, as provided in § 16-60-101 et seq., then the action may be brought either in Pulaski County or the other county or counties;

(4) All civil actions brought against an organization that regulates extracurricular interscholastic activities in grades seven through twelve (7-12) in both public and private schools if the organization's main administrative office is located in Pulaski County; and

(5) All other actions required by law to be brought in Pulaski County.

History. Civil Code, § 90; Acts 1871, No. 48, § 1 [90], p. 219; A.S.A. 1947, § 27-603; Acts 2001, No. 806, § 1; 2003, No. 1185, § 190; 2011, No. 600, § 1.

Amendments. The 2011 amendment added present (4) and redesignated former (4) as (5).

CASE NOTES

Analysis

Actions Against Administrative Agency.
Actions Against State, Etc.

Actions Against Administrative Agency.

In a case in which respondents filed a lawsuit in White County, Arkansas, against the Arkansas Game and Fish Commission (AGFC), seeking an injunction enjoining the AGFC from leasing, conveying, encumbering, or otherwise transferring mineral rights to certain land, a writ of prohibition that was sought by the AGFC was not appropriate. Section 16-60-101 and this section provided the circuit court with the authority to conclude that venue was proper in White County. Ark. Game Fish Comm'n v. Mills, 371 Ark. 317, 265 S.W.3d 760 (2007).

Actions Against State, Etc.

Where candidate filed a petition for qualification as an independent candidate for the office of Arkansas House of Representatives and his petition was denied because it did not contain the required number of verified signatures, the candidate erred by filing a civil rights action against the Arkansas Secretary of State in the Phillips County Circuit Court; subdivision (3) of this section required the suit to be filed in Pulaski County, Arkansas. Daniels v. Weaver, 367 Ark. 327, 240 S.W.3d 95 (2006).

Trial court properly dismissed plaintiff's complaint against the Arkansas State Police, which asserted an illegal-exaction claim, because venue was improper; because the State Police could best be described as a "governmental enterprise," venue was proper in the county in which the seat of government was situated pursuant to subdivision (3) of this section. McCutchen v. Ark. State Police, 2009 Ark. 204, 307 S.W.3d 582 (2009).

16-60-104. Actions against corporations.

CASE NOTES

Proper County.

Circuit court erred by fixing venue for property owners' association suit against business owners for shortages and unpaid bills in Garland County, since the complaint did not allege that the restaurant was doing business in or was situated there in 2004, when the suit was filed; moreover, the association served the business by serving the corporation's president at his home, not his restaurant, which was in Saline County. JB Wayne, Inc. v. Hot Springs Village Prop. Owners' Ass'n, 97 Ark. App. 288, 248 S.W.3d 503 (2007).

16-60-111. Actions on debt, account, or note.

(a)(1) An action on a debt, account, or note, or for goods or services may be brought in the county where the defendant resided at the time the cause of action arose.

(2) However, if a city of the first class, a city of the second class, an incorporated town, a public facilities board, or a county is the defendant, the action shall be brought in the county in which the city, town, public facilities board, or county lies.

(b) In all such actions, summons may be served upon the defendant in any county in this state.

(c) The provisions of this section are cumulative to the venue laws of the State of Arkansas and shall not amend or repeal any other laws unless expressly in conflict therewith.

History. Acts 1977, No. 401, §§ 1-3; A.S.A. 1947, §§ 27-621 — 27-623; Acts 2007, No. 549, § 1; 2009, No. 546, § 1.

Amendments. The 2007 amendment inserted the (a)(1) designation and added (a)(2).

The 2009 amendment inserted "a public facilities board" and "public facilities board" in (a)(2), and made a related change.

16-60-112. Actions for personal injury or death.

CASE NOTES

Residence.

Trial court properly dismissed a personal representative's wrongful death action for improper venue because under subsection (a) of this section and § 16-55-213(a)(3)(A), venue was proper where a tenant resided at the time of death from carbon monoxide poisoning; such an interpretation harmonized both statutes and avoided the disfavored result of repeal by implication. Wright v. Centerpoint Energy Res. Corp., 372 Ark. 330, 276 S.W.3d 253 (2008).

16-60-113. Actions for damage to, or conversion of, personal property — Actions for fraud.

CASE NOTES

Analysis

Applicability.
Fraud.
Venue Improper.

Applicability.

Property owners' association's complaint against business owners did not allege physical damage to tangible personal property sufficient to bring the case within reach of § 16-60-113(a); it simply sought to hold the owners to their promise to pay for the shortage when the lease ended. JB Wayne, Inc. v. Hot Springs Village Prop. Owners' Ass'n, 97 Ark. App. 288, 248 S.W.3d 503 (2007).

Fraud.

Where a writ of prohibition entered in the court's prior decision required the circuit court to dismiss the representative of the Arkansas consumers from the case, no basis existed for venue over the only remaining named plaintiff; venue was not proper under subsection (b) of this section because there was nothing on the face of the complaint connecting any alleged fraudulent activity perpetrated in relation to the remaining plaintiff and the Texas consumers. Centerpoint Energy, Inc. v. Miller County Circuit Court, 372 Ark. 343, 276 S.W.3d 231 (2008).

Venue Improper.

Dismissal for improper venue under Ark. R. Civ. P. 12(b)(3) of a complaint alleging fraud in the inducement of contract was not erroneous because forum-selection clauses designated Kansas as governing law and in both Arkansas and Kansas a party had to plead fraud in the inducement of a forum-selection clause itself to avoid its application. Provence v. Nat'l Carriers, Inc., 2010 Ark. 27, — S.W.3d — (2010).

16-60-115. Action by insured or beneficiary against surety on contractor's performance bond.

Publisher's Notes. Section 17-22-314, referred to in a Cross References note, has been renumbered as § 17-25-314.

CASE NOTES

Improper Venue.

Subcontractor's suit against general contractor's surety, brought in Arkansas despite a forum selection clause in the subcontract naming Florida as the exclusive venue, was properly dismissed for improper venue under M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S.Ct. 1907, 32 L. Ed. 2d 513 (1972) and neither public policy nor inconvenience warranted a different result on appeal; this section specifically applied to state proper venue for an action against a surety on a contractor's payment or performance bond. Servewell Plumbing, LLC v. Fed. Ins. Co., 439 F.3d 786 (8th Cir. 2006).

16-60-116. Other actions — County where defendant resides or is summoned — Effective service.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

CASE NOTES

Repeal by Implication.

Section 16-55-213(a) repealed by implication an older venue statute, subsection (a) of this section: § 16-55-213(a) established a new general rule for venue different from the former rule, creating an irreconcilable conflict, and the reference to "all civil actions" demonstrated an intent to adopt a new venue scheme. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

CHAPTER 61

PARTIES

Subchapter 1 — General Provisions

16-61-107. Insanity during pendency of action — Guardian joined.

CASE NOTES

Proper Party.

Because plaintiff individual was not the proper party to pursue the tort claims against defendants due to her incompetency, and she did not move to substitute the proper party after being put on notice of the need for substitution, the district court did not err in dismissing the claims. Kuelbs v. Hill, 615 F.3d 1037 (8th Cir. 2010).

16-61-109. Fees of guardian or attorney appointed to defend infant, insane person, or prisoner — Costs.

CASE NOTES

In General.

Finding against appellants in an action concerning property transfers was proper where it was determined that the circuit court was exercising its equitable power when it ordered that fees be taxed as costs against them. Middleton v. Lockhart, 364 Ark. 32, 216 S.W.3d 98 (2005).

16-61-110. Foreign executors, administrators, and guardians.

CASE NOTES

Appointment.

Son, a foreign administrator of his mother's estate, was subject to the requirements for domiciliary personal representatives found in §§ 28-48-101 through 28-48-109, pursuant to this section. Because the son had not been appointed administrator of his mother's estate in any state at the time he filed his original complaint for trespass and conversion of timber, he did not have standing to sue; because the complaint was a nullity, a second complaint could not relate back under Ark. R. Civ. P. 15(c). Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

Subchapter 2 — Uniform Contribution Among Tortfeasors Act

16-61-201. "Joint tortfeasors" defined.

CASE NOTES

Joint Tortfeasors.

Summary judgment was improperly granted in a contribution case arising from the distribution of an estate and a trust as a beneficiary could have been a joint tortfeasor based on an allegation of civil conspiracy. Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006).

In a second trial, the judge was correct in refusing to credit $60,000 paid by an insurance company in the first trial because the other defendant, an insurance brokerage acting as the agent for the company, and the company were not joint tortfeasors; the jury only found the agent liable for deceit and the appellate court could not tell whether the damages awarded against the insurance company and the damages awarded against the agent compensated the policy purchaser for the "same injury to person or property." Aon Risk Servs. v. Mickles, 96 Ark. App. 369, 242 S.W.3d 286 (2006).

16-61-202. Right of contribution — Accrual — Pro rata share.

CASE NOTES

Limitation of Actions.

A cause of action for contribution accrues when one joint tortfeasor pays more than his or her pro rata share of common liability; thus, the three-year statute of limitations under § 16-56-105 had not yet expired due to the fact that a settlement had just been entered where an executor and his wife agreed to pay more of their fair share in a trust dispute. Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006).

16-61-203. Judgment against one tortfeasor.

CASE NOTES

Judgment.

In a second trial, the judge was correct in refusing to credit $60,000 paid by an insurance company in the first trial because the other defendant, an insurance brokerage acting as the agent for the company, and the company were not joint tortfeasors; the jury only found the agent liable for deceit and the appellate court could not tell whether the damages awarded against the insurance company and the damages awarded against the agent compensated the policy purchaser for the "same injury to person or property." Aon Risk Servs. v. Mickles, 96 Ark. App. 369, 242 S.W.3d 286 (2006).

16-61-204. Release — Effect on injured person's claim.

CASE NOTES

Release.

In a medical malpractice case, a release executed by a patient and a hospital was insufficient to release a doctor from liability under this section based on language in the release referencing the hospital's employees. Luu v. Still, 102 Ark. App. 11, 279 S.W.3d 481 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 336 (Apr. 23, 2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 579 (Sept. 4, 2008).

CHAPTER 62

SURVIVAL AND ABATEMENT OF ACTIONS

16-62-101. Survival of actions — Wrongs to person or property.

RESEARCH REFERENCES

Ark. L. Rev. Note, The Measure of Life: Determining the Value of Lost Years After Durham v. Marberry, 59 Ark. L. Rev. 125.

CASE NOTES

Analysis

Construction.
Administration of Estate.
Death of Party.
Evidence.
Medical Malpractice.
Multiple Actions.
Parties.

Construction.

Decedent died when his vehicle hit the back of a farm tractor on a highway; on appeal, the administratrix of the decedent's estate raised the issue of whether the circuit court erred in ruling that the wrongful-death statute allowing recovery of loss-of-life damages did not apply retroactively. The language included in § 16-62-101(b) was added by Acts 2001, No. 1516; however, the Act added only a new remedy to an already existing right, the act was meant to be applied retroactively, and the ruling of the circuit court on this issue was also error. McMickle v. Griffin, 369 Ark. 318, 254 S.W.3d 729 (2007).

Acts 2001, No. 1516 is meant to be applied retroactively. McMickle v. Griffin, 369 Ark. 318, 254 S.W.3d 729 (2007).

Administration of Estate.

Wrongful death and survival action filed by decedent's mother on behalf of herself and decedent was neither brought by and

in the name of an appointed personal representative of decedent nor were decedent's brother and biological father (both statutory beneficiaries under § 16-62-102(d)), joined as plaintiffs as required for a wrongful death action under § 16-62-102(b). Further, neither the mother nor anyone else had been appointed an administrator or executor as required for a survival action under this section; therefore, at the time the mother filed the action, she did not have standing to pursue the claims against defendants. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Regarding a father's motion to intervene in a mother's wrongful death and survivor action for the sole purpose of seeking to stay the proceedings pending a determination from the probate court as to who would be named administrator of decedent son's estate, Ark. R. Civ. P. 17 had no application because the action was not filed in accordance with § 16-62-102(b) or this section and the original complaint thus was a nullity. When the original complaint was a nullity, Ark. R. Civ. P. 17 was inapplicable because the original complaint never existed and, therefore, there was no pleading to amend. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Death of Party.

In a patient's medical malpractice suit against her since-deceased surgeon and the hospital, the appellate court granted the patient's motion to appoint the surgeon's widow as the special administratrix of the surgeon's estate for purposes of defending the case, reviving the case, and substituting the special administratrix in the surgeon's stead because the patient's personal-injury claims survived the surgeon's death under subdivision (a)(1) of this section. Section 16-62-106(a) gave the appellate court authority to appoint the widow, and the widow consented to stand in place of the surgeon. Taylor v. Landherr, 101 Ark. App. 279, 275 S.W.3d 656 (2008).

Evidence.

Circuit court erred in granting the directed-verdict motion of the church, insurer, and others, on the estate's claim for loss-of-life damages under subsection (b) of this section because there was substantial evidence from which a jury could have determined that the estate was entitled to loss-of-life damages. The testimony indicated that the decedent was a mother of four, as well as a grandmother; that she was close to her oldest daughter; that she had worked as a waitress; that she lived with a man for whom she had come to Arkansas; and that, at the time of the accident, the decedent was on her way to a family get-together. One Nat'l Bank v. Pope, 372 Ark. 208, 272 S.W.3d 98 (2008).

An estate seeking loss-of-life damages pursuant to subsection (b) of this section must present some evidence that the decedent valued his or her life, from which a jury could infer and derive that value and on which it could base an award of damages. Mere proof of life and then death is insufficient; that being said, it is not suggested that the evidence required be limited to direct evidence, as circumstantial evidence may certainly be used as well. One Nat'l Bank v. Pope, 372 Ark. 208, 272 S.W.3d 98 (2008).

Medical Malpractice.

Because the doctor's failure to perform to the appropriate standard of care constituted medical malpractice and was a proximate cause of the death of the child, under the Arkansas Wrongful Death statute the child's parents were awarded damages sustained as a proximate result of his wrongful death; the parents were also entitled to damages under the Arkansas Survival Statute, § 16-62-101 et seq. McMullin v. United States, 515 F. Supp. 2d 914 (E.D. Ark. 2007).

Wrongful-death and survival action brought by the administratrix of the decedent's estate against the medical center was time-barred under § 16-114-203 as the order appointing the administratrix was not effective until it was filed almost two weeks after the complaint was filed; therefore, at the time the administratrix filed this cause of action against the medical center, she was not the administrator of the estate and did not have standing to pursue the claim against the medical center. As such, the complaint a nullity. Hubbard v. Nat'l Healthcare of Pocahontas, Inc., 371 Ark. 444, 267 S.W.3d 573 (2007).

Multiple Actions.

Circuit court's order dismissing a wrongful death claim made pursuant to

§ 16-62-102(a) and (b), which failed to dispose of a survival claim made pursuant to this section, left the Arkansas Supreme Court without jurisdiction to entertain an appeal of the case in the absence of a final judgment. Myers v. McAdams, 366 Ark. 435, 236 S.W.3d 504 (2006).

Parties.

Plaintiff lacked standing to sue when she filed the original complaint because she had not yet been appointed the administrator of decedent's estate (her mother's estate) and because she was not the sole heir; however, upon being appointed administrator six days later, she was deemed to be a new party when she filed the timely amended complaint. Hackelton v. Malloy, 364 Ark. 469, 221 S.W.3d 353 (2006).

Summary judgment was properly awarded to a physician in a husband's wrongful-death/survival action because when the husband filed his original suit, no order had been entered appointing him as administrator, nor were all of the wife's heirs at law named as plaintiffs, as required by this section and § 16-62-102(b). Norton v. Luttrell, 99 Ark. App. 109, 257 S.W.3d 580 (2007).

Dismissal of a mother and father's wrongful death and survival action against the doctors, nurses, and hospital when their child was stillborn was proper as the tolling provisions of subsection (c) of this section did not apply where the mother was appointed personal representative of the infant's estate at the time the complaint was filed, and the complaint was filed more than two years after the death of the infant. Dachs v. Hendrix, 103 Ark. App. 184, 287 S.W.3d 627 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 771 (Oct. 29, 2008), superseded, 2009 Ark. 542, — S.W.3d — (2009).

In a claim brought against the suppliers of a pain pump, a dismissal was proper because a wife, as a patient's administratrix, did not seek substitution under Fed. R. Civ. P. 25 prior to a nonsuit of the case when it was pending in federal court. Therefore, the patient and his wife did not receive the benefit of § 16-56-126. Wilson v. Lincare, Inc., 103 Ark. App. 329, 288 S.W.3d 708 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 723 (Apr. 2, 2009).

Cited: Johnson v. Greene Acres Nursing Home Ass'n, 364 Ark. 306, 219 S.W.3d 138 (2005); Miller v. Centerpoint Energy Res. Corp., 98 Ark. App. 102, 250 S.W.3d 574 (2007).

16-62-102. Wrongful death actions — Survival.

RESEARCH REFERENCES

Ark. L. Rev. Note, The Measure of Life: Determining the Value of Lost Years After Durham v. Marberry, 59 Ark. L. Rev. 125.

CASE NOTES

Analysis

Complaint.
Medical Malpractice.
Parties.
—Personal Representatives.
Statute of Limitations.
Survival Action.

Complaint.

Although plaintiff lacked standing to sue when she filed the original complaint because she had not yet been appointed the administrator of decedent's estate and she was not the sole heir, upon being appointed administrator six days later, she was deemed to be a new party when she filed the timely amended complaint; the original complaint remained a document setting out allegations satisfying the fact-pleading requirements for a complaint set out in Ark. R. Civ. P. 8(a) and the facts pled in the original complaint were adopted by reference under Ark. R. Civ. P. 10(c) into the amended complaint. Hackelton v. Malloy, 364 Ark. 469, 221 S.W.3d 353 (2006).

District court did not abuse its discretion in denying a motion to amend the complaint filed by plaintiff, the decedent's

daughter, pursuant to Fed. R. Civ. P. 15(a), in a wrongful death action where the daughter, who at the time she filed the original complaint was not yet the personal representative of the estate and the heirs were not named as parties in the complaint, lacked standing to sue; the complaint amounted to a nullity and could not serve as the foundation for an amendment.Williams v. Bradshaw, 459 F.3d 846 (8th Cir. 2006).

Medical Malpractice.

Wrongful-death and survival action brought by the administratrix of the decedent's estate against the medical center was time-barred under § 16-114-203 as the order appointing the administratrix was not effective until it was filed almost two weeks after the complaint was filed; therefore, at the time the administratrix filed this cause of action against the medical center, she was not the administrator of the estate and did not have standing to pursue the claim against the medical center. As such, the complaint a nullity. Hubbard v. Nat'l Healthcare of Pocahontas, Inc., 371 Ark. 444, 267 S.W.3d 573 (2007).

Parties.

Circuit court properly concluded that the next of kin's wrongful death complaint against the physicians and nurses did not comply with § 16-62-102 (Supp. 1999) where there was no personal representative and the decedent's three siblings had not been named as plaintiffs in the action. Rice v. Tanner, 363 Ark. 79, 210 S.W.3d 860 (2005).

Order granting judgment on the pleadings in favor of a city, county, and others in a 42 U.S.C.S. § 1983 wrongful death action was affirmed as, when the original complaint was filed, the plaintiff, the decedent's daughter, was not yet the administratrix of the estate and the caption did not list the heirs individually, as required by Fed. R. Civ. P. 10(a) and Ark. R. Civ. P. 10(a); the complaint did not identify the heirs as parties and did not meet the requirements of subsection (b) of this section, thus, the daughter lacked standing to sue.Williams v. Bradshaw, 459 F.3d 846 (8th Cir. 2006).

Wrongful death and survival action filed by decedent's mother on behalf of herself and decedent was neither brought by and in the name of an appointed personal representative of decedent nor were decedent's brother and biological father (both statutory beneficiaries under subsection (d) of this section), joined as plaintiffs as required for a wrongful death action under subsection (b) of this section. Further, neither the mother nor anyone else had been appointed an administrator or executor as required for a survival action under § 16-62-101; therefore, at the time the mother filed the action, she did not have standing to pursue the claims against defendants. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Regarding a father's motion to intervene in a mother's wrongful death and survivor action for the sole purpose of seeking to stay the proceedings pending a determination from the probate court as to who would be named administrator of decedent son's estate, Ark. R. Civ. P. 17 had no application because the action was not filed in accordance with subsection (b) of this section or § 16-62-101 and the original complaint thus was a nullity. When the original complaint was a nullity, Ark. R. Civ. P. 17 was inapplicable because the original complaint never existed and, therefore, there was no pleading to amend. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Dismissal of a wrongful-death action against a doctor and a hospital was proper because the savings statute under § 16-62-102(b) did not apply since the case was improperly refiled by a mother and father as heirs at law when a personal representative had been appointed; the personal representative should have been substituted as the real party in interest prior to dismissal. Recinos v. Zelk, 369 Ark. 7, 250 S.W.3d 221 (2007).

Summary judgment was properly awarded to a physician in a husband's wrongful-death/survival action because when the husband filed his original suit, no order had been entered appointing him as administrator, nor were all of the wife's heirs at law named as plaintiffs, as required by § 16-62-101 and subsection (b) of this section. Norton v. Luttrell, 99 Ark. App. 109, 257 S.W.3d 580 (2007).

Trial court did not err by granting the doctors' summary judgment because the medical malpractice action was not properly filed within the two-year statute of

limitations of § 16-114-203(a). The trial court did not err in holding that the November 3, 2009 order of substitution of parties was ineffective and therefore the action was barred by the statute of limitations because: (1) the wrongful death complaint filed by the patient's daughter and husband in April 2009 was a nullity because four siblings of the patient were omitted as party plaintiffs as required by subsection (b) of this section and therefore it never existed; (2) the order of substitution of parties that substituted the daughter in her capacity of estate administrator as the party plaintiff did not allege any facts supporting the action and therefore did not constitute an amended complaint; (3) the order of substitution was entered on November 3, 2009, after the statute of limitations had expired as to each doctor in July 2009 and September 2009; and (4) the estate administrator could not establish the first element of the continuous-course-of-treatment doctrine because she could not establish that the doctors provided continuous treatment to the patient up to November 3, 2009. Mendez v. Glover, 2010 Ark. App. 808, — S.W.3d — (2010).

—Personal Representatives.

Dismissal of a mother and father's wrongful death and survival action against the doctors, nurses, and hospital when their child was born still born was proper as the tolling provisions of subsection (c) of this section did not apply where the mother was appointed personal representative of the infant's estate at the time the complaint was filed, and the complaint was filed more than two years after the death of the infant. Dachs v. Hendrix, 103 Ark. App. 184, 287 S.W.3d 627 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 771 (Oct. 29, 2008), superseded, 2009 Ark. 542, — S.W.3d — (2009).

Statute of Limitations.

Motion to dismiss filed by an energy company should not have been granted because a claim was not time barred under § 16-62-102(c)(1) where it was filed within three years of death, but not within three years of an accident; there was no negligence claim filed by a decedent or on his behalf prior to the filing of a wrongful-death action. Miller v. Centerpoint Energy Res. Corp., 98 Ark. App. 102, 250 S.W.3d 574 (2007).

Under the savings statute, subdivision (c)(2) of this section, the administratrix had one year from the date of the nonsuit to refile her complaint against the medical center, and the administratrix did this by refiling her complaint on November 17, 2005; therefore, the circuit court erred in dismissing the administratrix's complaint against it. Brown v. Nat'l Health Care of Pocahontas, Inc., 102 Ark. App. 148, 283 S.W.3d 224 (2008).

Survival Action.

Circuit court's order dismissing a wrongful death claim which failed to dispose of a survival claim made pursuant to § 16-62-101 left the Arkansas Supreme Court without jurisdiction to entertain an appeal of the case in the absence of a final judgment. Myers v. McAdams, 366 Ark. 435, 236 S.W.3d 504 (2006).

Order appointing the administratrix on April 11, 2003, as special administratrix specifically stated that the term was for six months; thus, her term expired on October 11, 2003, before she filed complaints against all of the appellees except for the medical center; unless a person was the personal representative or executor of the estate at the time of filing, he had no standing to file a complaint on behalf of the estate and any complaint filed was a nullity, and because the administratrix's complaint was a nullity, her nonsuit on December 6, 2004, did not dismiss these complaints; it dismissed only the properly filed complaint against the medical center, and because the first complaints filed were nullities, the November 17, 2005 complaint was the first complaint filed by a properly appointed personal representative and no savings statute applied; thus, the administratrix's complaint against the medical personnel was barred by the statute of limitations. Brown v. Nat'l Health Care of Pocahontas, Inc., 102 Ark. App. 148, 283 S.W.3d 224 (2008).

Cited: Johnson v. Greene Acres Nursing Home Ass'n, 364 Ark. 306, 219 S.W.3d 138 (2005).

16-62-105. Death or expiration of powers — Revivor of action.

CASE NOTES

Analysis

Applicability.
Revival of Action.

Applicability.

Where the guardian of the wife's estate failed to timely obtain letters of administration within forty days of the wife's death, the guardian lost its authority to prosecute an action to contest her husband's will on her behalf when it failed to comply with § 28-65-323. The circuit court erred by deciding the case based on a failure to comply with § 16-62-105, which was superceded by Ark. R. Civ. P. 25 and did not apply in this special proceeding. First Sec. Bank v. Estate of Leonard, 369 Ark. 213, 253 S.W.3d 434 (2007).

Revival of Action.

Where the Department of Health and Human Services (DHHS) filed a petition for a Writ of Prohibition or a Writ of Certiorari to the Circuit Court of Pulaski County instructing it that it was without jurisdiction to grant a wife's request for an increase of her Medicaid Community Spouse Monthly Income Allowance and Medicaid Community Spouse Resource Allowance until her husband applied for Medicaid, the matter had to be remanded to the trial court to determine if it was the type of action that was subject to a revivor because the wife's husband had died after the DHHS filed its petition. Arkansas HHS v. Smith, 366 Ark. 584, 237 S.W.3d 79 (2006), overruled in part, Deaver v. Faucon Props., Inc., 367 Ark. 288, 239 S.W.3d 525 (2006).

Circuit court order appointing son as special administrator for his deceased mother and ordering substitution of parties pursuant to Ark. R. Civ. P. 25 was sufficient to revive mother's breach of contract and negligence action against the nursing home as the procedures in subsections (a) and (b) of this section were superseded by the Rules of Civil Procedure in 1986 and no longer governed the procedure for obtaining an order of revivor. Deaver v. Faucon Props., Inc., 367 Ark. 288, 239 S.W.3d 525 (2006).

16-62-106. Death of a party — Revivor in name of special administrator.

CASE NOTES

Revival.

In a patient's medical malpractice suit against her since-deceased surgeon and the hospital, the appellate court granted the patient's motion to appoint the surgeon's widow as the special administratrix of the surgeon's estate for purposes of defending the case, reviving the case, and substituting the special administratrix in the surgeon's stead because the patient's personal-injury claims survived the surgeon's death under § 16-62-101(a)(1). Subsection (a) of this section gave the appellate court authority to appoint the widow, and the widow consented to stand in place of the surgeon. Taylor v. Landherr, 101 Ark. App. 279, 275 S.W.3d 656 (2008).

16-62-108. Revivor of actions against plaintiff's representative or successor — Exception.

CASE NOTES

Analysis

Order.
Timeliness.

Order.

Estate administrator's order fulfilled the requirements of the revivor statute where the order clearly substituted the administrator as a party and recited that he was the proper party to pursue his case on behalf of the decedent; the failure to use "revivor" in the order did not mean that the cause of action should not be allowed to continue. Deaver v. Faucon Props., 94 Ark. App. 370, 231 S.W.3d 100 (2006), superseded, 367 Ark. 288, 239 S.W.3d 525 (2006).

Timeliness.

Where after death of plaintiff, suit in state court was not revived within the period prescribed by this section and state court action was dismissed, administrator of deceased plaintiff could not thereafter bring the same action in federal court. Robison v. Jones, 261 F.2d 584 (8th Cir. Ark. 1958).

Cited: Wilson v. Lincare, Inc., 103 Ark. App. 329, 288 S.W.3d 708 (2008).

16-62-109. Time for revivor — Effect of expiration.

CASE NOTES

Analysis

Applicability.
Dismissal.

Applicability.

Where the guardian of the wife's estate failed to timely obtain letters of administration within forty days of the wife's death, the guardian lost its authority to prosecute an action to contest her husband's will on her behalf when it failed to comply with § 28-65-323. The circuit court erred by deciding the case based on a failure to comply with § 16-62-109, which concerned time for revivor of a civil action and was inapplicable in this special proceeding. First Sec. Bank v. Estate of Leonard, 369 Ark. 213, 253 S.W.3d 434 (2007).

Dismissal.

Circuit court erred in striking and dismissing son's complaint as the circuit court order appointing son as special administrator for his deceased mother and ordering substitution of the parties pursuant to Ark. R. Civ. P. 25 was sufficient to revive the mother's breach of contract and negligence action against the nursing home; the procedures in the reviver statute, §§ 16-62-101 to 16-62-111, were superseded by the Rules of Civil Procedure in 1986 and no longer governed the procedure for obtaining an order of reviver and, thus, an order pursuant to the revivor statutes was unnecessary. Deaver v. Faucon Props., Inc., 367 Ark. 288, 239 S.W.3d 525 (2006).

CHAPTER 63

PLEADINGS AND PRETRIAL PROCEEDINGS

SUBCHAPTER.
2. Pleadings.

Subchapter 2 — Pleadings

Effective Dates. Acts 2011, No. 336, § 2: Mar. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that complaints are often misconstrued with respect to the amount in controversy; that a plaintiff should be allowed to state with specificity the actual amount sought; that when a plaintiff pleads with particularity the amount in controversy the plaintiff should be bound by that pleading; and that this act is immediately necessary because the rules regarding pleading civil complaints should be implemented without undue delay due to current strain on judicial dockets. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-63-221. Complaint — Amount in controversy.

(a) A plaintiff who files a complaint in a circuit or district court praying for an award of damages may, but is not required to, state an amount in controversy for the purposes of establishing subject-matter jurisdiction and determining if the amount sought is within the jurisdictional limits of the court.

(b) A declaration allowed by subsection (a) of this section is binding on the plaintiff with respect to the amount in controversy unless the plaintiff subsequently amends the complaint to pray for damages in an amount that exceeds the jurisdictional limits of the court, at which time the amendment is governed by the Arkansas Rules of Civil Procedure.

History. Acts 2011, No. 336, § 1.

Subchapter 4 — Continuance or Dismissal

16-63-402. Continuance for absence of evidence or witness.

CASE NOTES

Evidence.

Because the jury had before it ample evidence that the victim previously made claims of sexual abuse that no one believed, defendant was not prejudiced during his trial for sexual assault by the trial court's denial of his motion for a continuance, pursuant to subsection (a) of this section, to provide an investigator who could testify as to the victim's inconsistencies and untruths. Brown v. State, 374 Ark. 341, 288 S.W.3d 226 (2008).

Subchapter 5 — Citizen Participation in Government Act

16-63-502. Legislative findings.

RESEARCH REFERENCES

Ark. L. Rev. Have I Been SLAPPed? Arkansas's Attempt to Curb Abusive Litigation: The Citizen Participation in Government Act, 60 Ark. L. Rev. 507.

CHAPTER 64

TRIAL AND VERDICT

16-64-114. Jury instructions generally.

CASE NOTES

Formal Deliberations.

Formal deliberations have begun where a jury has received its instructions and heard the arguments of counsel before retiring to the jury room. D.B.&J. Holden Farms, Ltd. P'ship v. Ark. State Highway Comm'n, 93 Ark. App. 202, 218 S.W.3d 355 (2005).

16-64-119. Verdict of jury — Polling jury.

CASE NOTES

Applicability.

This section pertains to civil trials and was inapplicable in this criminal case. Adams v. State, 2009 Ark. 375, 326 S.W.3d 764 (2009), rehearing denied, Adams v. State, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 556 (Sept. 10, 2009), cert. denied, Adams v. Arkansas, — U.S. —, 130 S. Ct. 1922, 176 L. Ed. 2d 392 (2010).

16-64-122. Comparative fault.

CASE NOTES

Analysis

Construction.
Applicability.
Apportionment of Fault.
Jury.

Construction.

Civil Justice Reform Act (CJRA), § 16-55-201 et seq., pertains to fault apportionment in a general way, and the Arkansas Comparative Fault Act under this section specifically defines fault and identifies whose fault can be apportioned. Because these two provisions address the same subject matter, it is reasonable to conclude that the general terms of the CJRA are intended to be subject to the specific terms of the Arkansas Comparative Fault Act. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Applicability.

Trial court should not have instructed the jury on comparative fault under this section in appellant's action for damages resulting from a car accident because appellee was required to yield the right of way under § 27-51-603 and appellant did not have a duty to anticipate his failure to yield. The fact that appellant allegedly admitted fault by stating that she was looking for a parking spot was irrelevant as she had no duty; rather it was appellee's duty to avoid the accident resulting from appellant hit appellee's car as he was backing out of a driveway onto the high-

way on which appellant was traveling. Bell v. Misenheimer, 102 Ark. App. 389, 285 S.W.3d 693 (2008), rev'd, 2009 Ark. 222, 308 S.W.3d 120 (2009).

Apportionment of Fault.

Appellate court reversed a judgment that awarded no damages to a building owner even though the jury found that the owner was not liable and that a fire extinguisher company and plaintiff restaurant were each fifty percent (50%) liable for damages caused by the fire as, under this section, the owner's liability was tc be compared to the company's liability. Yu v. Metro. Fire Extinguisher Co., 94 Ark. App. 317, 230 S.W.3d 299 (2006).

Section 16-55-202 should be interpreted as being compatible with subsection (a) of this section, which limits the apportionment of fault to an individual or entity from whom the claiming party seeks to recover damages, which includes individuals and entities that are subject to being brought into a suit pursuant to a cross or third party claim under Ark. R. Civ. P. 13, 14, but excludes nonparties who are otherwise immune from suit, including employers who are immune pursuant to § 11-9-105(a), the exclusive remedies provision of the Workers' Compensation Act, § 11-9-101 et seq. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Jury.

Circuit court's error in resubmitting a negligence case on special interrogatory verdict forms without allowing the individual the opportunity to argue to the jury the effects of the answers to the interrogatories pursuant to § 16-64-122(d) was not harmless error where the jury apportioned each party fifty percent (50%) fault, even the slightest tipping of those percentages in favor of the individual would have resulted in a judgment against the owner of the electrical wire, the jury had been deadlocked at one point, six to six, only the minimum number of jurors needed for a verdict were in agreement, and the error was particularly injurious because the individual could not have known at closing arguments that special interrogatory forms would be used. Campbell v. Entergy Arkansas, Inc., 363 Ark. 132, 211 S.W.3d 500 (2005).

CHAPTER 65

JUDGMENTS GENERALLY

SUBCHAPTER.

Subchapter 1 — General Provisions

16-65-103. Computation of amount of judgment.

CASE NOTES

Cited: McWhorter v. McWhorter, 2009 Ark. 458, — S.W.3d — (2009).

16-65-113. Entry into judgment book — Index.

(a) The clerk must keep among the records of the court a book to be called the judgment book.

(b) The entry in the judgment book must show the names of the plaintiff and defendant and, if more than one (1), then of the first-named of each in the pleadings with the words "and others", the term at which the judgment was entered, and a reference to the order book and page at which the judgment is to be found, with a space left for the entry of the satisfaction of the judgment.

(c)(1) The clerk shall immediately after the rendition of any judgment or decree enter it in the judgment book, in which shall be alphabetically cross-indexed all the judgments of the court, according to the surnames of the plaintiff and defendant. If there is more than one (1) plaintiff or defendant, then the names of all plaintiffs and defendants shall be so indexed and cross-indexed.

(2) It shall be so arranged that all the judgments in the case of plaintiffs whose surnames commence with the same letter and all of each term shall immediately succeed each other.

(d) If a clerk scans judgments so that they appear in full on an Internet-based system or other similar electronic system and are searchable by name and case number, the requirements of this subchapter no longer apply.

History. Rev. Stat., ch. 84, § 31; Civil Code, § 424; Acts 1909, No. 17, § 1, p. 26; C. & M. Dig., § 6282; Pope's Dig., § 8238; A.S.A. 1947, §§ 29-118, 29-120, 29-121; Acts 2009, No. 1209, § 1.

Amendments. The 2009 amendment added (d).

16-65-114. Interest on judgments.

(a) Interest on a judgment entered by a circuit court on a contract shall bear interest at the rate provided by the contract or ten percent (10%) per annum, whichever is greater, and on any other judgment at ten percent (10%) per annum, but not more than the maximum rate permitted by the Arkansas Constitution, Article 19, § 13, as amended.

(b) Interest on a judgment entered by a district court on a contract shall bear interest at the rate provided by the contract or ten percent (10%) per annum, whichever is greater, and on any other judgment at ten percent (10%).

(c) A judgment rendered or to be rendered against a county in the state on county warrants or other evidence of county indebtedness shall not bear any interest after the passage of this act.

History. Acts 1868, No. 9, § 2, p. 32; 1893, No. 78, § 1, p. 145; C. & M. Dig., § 7360; Pope's Dig., § 9399; Acts 1975, No. 474, § 1; 1985, No. 782, § 1; A.S.A. 1947, § 29-124; Acts 2009, No. 633, § 15.

Amendments. The 2009 amendment substituted "a circuit court" for "any court or magistrate" in (a); inserted (b) and redesignated the subsequent subsection accordingly; and made minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Tort Law, 27 U. Ark. Little Rock L. Rev. 759.

CASE NOTES

In General.

In a home sale breach of contract action, reversal and remand for a damages trial mooted the issue as to whether the sellers were entitled to postjudgment interest pursuant to subsection (a) of this section. Heflin v. Brackelsberg, 2010 Ark. App. 261, — S.W.3d — (2010).

Cited: DC Xpress, L.L.C. v. Briggs, 2009 Ark. App. 651, — S.W.3d — (2009).

16-65-117. Judgment as lien on land.

(a)(1)(A) A judgment in the Supreme Court or circuit courts of this state, and in the United States district courts or United States bankruptcy courts within this state, shall be a lien on the real estate owned by the defendant in the county in which the judgment was rendered from the date of its rendition only if the clerk of the court which rendered the judgment maintains a permanent office within the county, at which office permanent records of the judgments of the court are continuously kept and maintained, and the judgment has been filed with the circuit clerk. A judgment in the district courts of this state shall not be a lien on the real estate owned by the defendant in the county in which the judgment was rendered until the judgment has been filed and indexed in the judgment records of the circuit clerk in the county in which the judgment was rendered.

(B) As to any person who does not have actual notice of the rendition of the judgment, the judgment shall be a lien from the date the judgment is recorded and indexed by the court clerk in a manner that provides reasonable notice to the public.

(2)(A) If a judgment is rendered by one (1) of the courts in a county where the clerk of the court does not maintain a permanent office at which permanent records of the judgments of the court are continuously kept and maintained, the judgment shall not be a lien on the land of the defendant in that county until a certified copy of the judgment is filed in the office of the circuit clerk of that county.

(B) As to any person who does not have actual notice of the rendition of the judgment, the judgment shall be a lien from the date the judgment is recorded and indexed by the court clerk in a manner that provides reasonable notice to the public.

(b)(1) No such judgment shall be a lien on the land of the defendant in any other county until a certified copy of the judgment is filed in the office of the clerk of the circuit court of the county in which the land lies.

(2) As to any person who does not have actual notice of the rendition of the judgment, the judgment shall be a lien from the date the judgment is recorded and indexed by the court clerk in a manner that provides reasonable notice to the public.

(c)(1) The clerk, on the filing in his office of a certified copy of a judgment of any of the courts mentioned in subsection (a) of this section, and upon the payment of three dollars ($3.00), shall immediately proceed to docket and index the judgment in the same manner as though rendered in the court of his or her own county. From that time, the judgment shall be a lien on the defendant's lands in that county.

(2) It shall be the duty of the court clerk to index each judgment immediately upon filing it in the permanent records of the judgments of the court. For purposes of this section, the term "judgments" shall include any order, decree, or judgment which contains a provision for payment of money for the support and care of any child or children through the registry of the court.

(d)(1) The liens authorized by this section shall continue in force for ten (10) years from the date of the judgment and may be revived under § 16-65-501.

(2) Except as provided in § 16-65-501, a transcript of the judgment of revivor, when filed in other counties, shall have the same and like effect as a judgment of revivor has in the county in which it is rendered.

History. Acts 1891, No. 56, §§ 1, 2, p. 92; C. & M. Dig., §§ 6299, 6300; Pope's Dig., §§ 8255, 8256; Acts 1945, No. 55, § 2; 1959, No. 182, § 1; 1963, No. 124, § 1; 1977, No. 333, § 3; 1985, No. 228, § 1; A.S.A. 1947, §§ 12-1720, 29-130, 29-131; Acts 1987, No. 356, § 1; 1989, No. 931, § 1; 1993, No. 1179, § 1; 1995, No. 475, § 1; 2011, No. 227, § 2.

Amendments. The 2011 amendment subdivided (d); inserted "under § 16-65-501" in (d)(1); and inserted "Except as provided in § 16-65-501" in (d)(2).

RESEARCH REFERENCES

Ark. L. Notes. Laurence and Circo, An Exchange of Collegial Memoranda on the Attachment of a Judgment Lien to Real Property Subject to a Buy-Sell Agreement, 2006 Arkansas L. Notes 93.

CASE NOTES

Judgments.

Judgment debtor, which obtained a judgment against a debtor in Texas, and recorded its judgment in the real property records of an Arkansas county, had an enforceable judgment lien against the debtor's real property in that county. United States v. Neal, — F. Supp. 2d —, 255 F.R.D. 638, 2008 U.S. Dist. LEXIS 107768 (W.D. Ark. Dec. 30, 2008), aff'd, — F.3d —, 2010 U.S. App. LEXIS 18553 (8th Cir. Ark. 2010).

Subchapter 5 — Survival and Revival

SECTION.

16-65-501. Scire facias.

(a) The plaintiff or his or her legal representatives at any time before the expiration of the lien of a judgment may sue out a scire facias to revive the judgment.

(b) The scire facias shall be served on the defendant or his or her legal representatives, terre-tenants, or other person occupying the land, and may be directed to and served in any county in this state.

(c)(1) If the defendant cannot be found, the court shall make an order briefly setting forth the nature of the case and requiring all persons interested to appear on a date set by the court and show cause why the judgment or decree should not be revived and lien continued.

(2) A copy of the order shall be put up for four (4) weeks at the courthouse door of the county in which the judgment or decree may have been rendered.

(d) If upon service or publication of the scire facias, as required in subsection (c) of this section, the defendant or any other person interested does not appear and show cause why such judgment or decree shall not be revived, the judgment shall be revived and the lien continued for another period of ten (10) years and so on from time to time as often as may be necessary.

(e) If a scire facias is sued out before the termination of the lien of any judgment or decree, the lien of the judgment revived shall have relation to the day on which the scire facias issued.

(f) No scire facias to revive a judgment shall be issued except within ten (10) years from the date of the rendition of the judgment, or if the judgment shall have been previously revived, then within ten (10) years from the order of revivor.

(g)(1) Unless before the expiration of a judgment the notice under subdivision (g)(2) of this section is recorded in the real property records of a county other than the county in which an action under this section is filed:

(A) A scire facias to revive the judgment is not effective in the county other than the county in which an action under this section is filed; and

(B)(i) A recorded judgment lien may not be revived against real property in the county other than the county in which an action under this section is filed.

(ii) This subdivision (g)(1)(B) does not prevent a judgment creditor from registering a judgment or recording a judgment lien in a new county after a judgment is obtained or revived.

(2) The notice shall include with respect to the action:

(A) The names of the judgment debtors and judgment creditors;

(B) The name of the court and case number in which the judgment was rendered;

(C) The name of the county in which the petition for a writ of scire facias was filed;

(D) The date on which the petition was filed; and

(E) A statement that the filing party intends to maintain its judgment lien against any property of the judgment debtor located in the county in which the notice is filed.

History. Rev. Stat., ch. 84, §§ 6-11; Acts 1891, No. 110, § 1, p. 192; C. & M. Dig., §§ 6316-6322; Pope's Dig., §§ 8271-8277; Acts 1983, No. 718, §§ 1, 2; 1985, No. 228, § 2; A.S.A. 1947, §§ 29-601—29-607; Acts 2011, No. 227, § 1.

Amendments. The 2011 amendment deleted the last sentence in (e); and added (g).

CASE NOTES

Revival.

Under this section, the dealership owner's writ of scire facias to revive a ten-year-old judgment against the partner should have been granted because the owner's 1993 judgment had not been satisfied; the partner had twice tendered the cash and stock certificates but, despite his efforts, he had been unable to extinguish his judgment debt. Carder Buick-Olds Co. v. Wooten, 2009 Ark. App. 310, 308 S.W.3d 156 (2009).

CHAPTER 66

EXECUTION OF JUDGMENTS

SUBCHAPTER.

Subchapter 2 — Property Subject to Execution — Exemptions

SECTION.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Common-law Exemptions, 2005 Arkansas L. Notes 65.

16-66-209. Exemption — Proceeds of life, health, accident, and disability insurance.

(a) To the extent permitted by the Arkansas Constitution, all moneys paid or payable to any resident of this state under an insurance policy providing for the payment of life, sick, accident, or disability benefits shall be exempt from liability or seizure under judicial process of any court and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment, or decree of any court.

(b) As used in this section, "moneys" means a payment made under an insurance policy to compensate:

(1) The insured or beneficiary for a claim under the policy; or

(2) The owner, insured, or beneficiary for the cash surrender value of the policy.

(c) Nothing in this section shall be construed to affect the validity of any sale, assignment, mortgage, pledge, or hypothecation of a policy of insurance or the avails, proceeds, or benefits of a policy of insurance.

History. Acts 1933, No. 102, § 1; Pope's Dig., § 7988; A.S.A. 1947, § 30-208; Acts 2009, No. 469, § 1.

Amendments. The 2009 amendment inserted (b) and redesignated the remaining text accordingly; inserted "To the extent permitted by the Arkansas Constitution" in (a); and made related and minor stylistic changes.

16-66-210. Homestead Exemption Act.

CASE NOTES

Analysis

Construction.
Extent of Exemption.
Head of a Family.

Construction.

Defendant's testimony that he was entitled to Second Amendment protection for his possession of a machine gun and a sawed off shotgun was properly withheld from the jury, where he was only a member of an unregulated militia; whether he was entitled to court-appointed counsel depended upon the homestead exemption under this section. United States v. Fincher, 538 F.3d 868 (8th Cir. 2008), cert. denied, — U.S. —, 129 S. Ct. 1369, 173 L. Ed. 2d 591 (2009).

Extent of Exemption.

Taxpayer's wife did not have any dower interest that would be impaired by the foreclosure of the taxpayer's interest in his residence because the Arkansas Homestead Exemption did not protect property from execution to satisfy tax liens and because under Arkansas law, the right of dower was an inchoate right, rather than a vested one, and as such was not entitled to priority over a perfected federal tax lien. United States v. Bruner, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 112632 (W.D. Ark. Nov. 5, 2008).

Homestead exemption under subdivision (c)(1) of this section extended to only 80 of defendant's 120 acres of real property, and defendant and his wife could claim only a single homestead exemption. Defendant therefore had 40 acres of nonhomestead property that could have been sold to pay legal fees, and reimbursement was required for legal services provided under the Criminal Justice Act, 18 U.S.C.S. § 3006A. United States v. Fincher, 593 F.3d 702 (8th Cir. 2010).

Head of a Family.

Where an unmarried bankruptcy debtor lived with his non-dependent sibling, the debtor nonetheless qualified as head of household for purposes of a homestead exemption since his dependent parent lived with him prior to the parent's death and there was no showing that the homestead was terminated; it was irrelevant that the parent was only partially dependent upon debtor, that debtor might not have been legally obligated to support the parent, and that the parent died prior to debtor's bankruptcy. In re Morris, 340 B.R. 78 (Bankr. W.D. Ark. 2006).

Because each debtor was an Arkansas resident, was head of a household, and had claimed the appropriate acreage, debtors were, for the purposes of the opinion, entitled to claim their respective eighty acres as exempt under Arkansas law. In re White, — B.R. —, 2011 Bankr. LEXIS 1573 (Bankr. E.D. Ark. Apr. 29, 2011).

16-66-211. Claiming exemptions — Schedule of property — Stay of execution — Levy on remainder of property — Appeal.

CASE NOTES

Noncompliance.

Defendant's motion for the return of personal property that was seized in response to plaintiff's writ of execution and to claim statutory exemptions was denied because defendant had not filed with the court a schedule, verified by affidavit, setting forth all of his property as required by this section, which Fed. R. Civ. P. 69(a) made applicable to the proceeding, and as to defendant's claim of statutory exemptions under 11 U.S.C.S. § 522(d), defendant failed to offer any evidence that he had filed for bankruptcy, and defendant had not followed the procedures set forth in 11 U.S.C.S. § 521 for filing a schedule of assets. Chanel, Inc. v. Adamson, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 9292 (W.D. Ark. Jan. 29, 2008).

16-66-218. Exemptions from execution under federal bankruptcy proceedings.

RESEARCH REFERENCES

ALR. Jewelry and Clothing as Within Debtor's Exemptions under State Statutes. 44 A.L.R.6th 481.

Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401.

Subchapter 3 — Staying, Quashing, or Vacating Writ

16-66-301. Petition to judge, stay, quash, or set aside execution — Proceedings.

CASE NOTES

Noncompliance.

In a case involving a writ of execution, a debtor failed to follow subsection (a) of this section because he did not file a petition verified by an affidavit to challenge the writ; however, despite a trial court's ruling that the debtor's response did not comply with the statute, the trial court considered most or all of the pled defenses. Looney v. Raby, 100 Ark. App. 326, 268 S.W.3d 345 (2007).

Subchapter 4 — Levy and Sale

16-66-402. Levy on real estate — Certificate of levy filed with recorder — Levy as notice to purchaser or mortgagee.

CASE NOTES

Lis Pendens.

Judgment debtor, which obtained a judgment against a debtor in Texas, and recorded its judgment in the real property records of an Arkansas county, had an enforceable judgment lien against the debtor's real property in that county. United States v. Neal, — F. Supp. 2d —, 255 F.R.D. 638, 2008 U.S. Dist. LEXIS 107768 (W.D. Ark. Dec. 30, 2008), aff'd, —

F.3d —, 2010 U.S. App. LEXIS 18553 (8th Cir. Ark. 2010).

Subchapter 6 — Uniform Enforcement of Foreign Judgments Act

16-66-601. Definition.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Child Support Decrees — Uniform Enforcement of Foreign Judgments Act Mathews v. Mathews, 59 Ark. L. Rev. 803.

CASE NOTES

In General.

Where the circuit court amended a Washington state order to reflect the lower amount of money owed by the employer, as garnishee, to the insurer, the employer's motion was a direct attack on the Washington state default judgment. Nationwide Ins. Enter. v. Ibanez, 368 Ark. 432, 246 S.W.3d 883 (2007).

16-66-602. Filing and status of foreign judgments.

CASE NOTES

Proper Registration Accepted.

Judgment debtor, which obtained a judgment against a debtor in Texas, and recorded its judgment in the real property records of an Arkansas county, had an enforceable judgment lien against the debtor's real property in that county. United States v. Neal, — F. Supp. 2d —, 255 F.R.D. 638, 2008 U.S. Dist. LEXIS 107768 (W.D. Ark. Dec. 30, 2008), aff'd, — F.3d —, 2010 U.S. App. LEXIS 18553 (8th Cir. Ark. 2010).

Trial court had jurisdiction to issue a writ of garnishment upon an employer because a company that was awarded a judgment against an employee properly registered the valid Florida judgment in the trial court. Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III L.P., 374 Ark. 489, 288 S.W.3d 627 (2008).

CHAPTER 68

COSTS AND BONDS

Subchapter 6 — Incarcerated Persons

16-68-603. Indigency.

CASE NOTES

Notice of Appeal.

Court clerk should have filed a movant's notice of appeal on the day the notice of appeal from the denial of his motion for postconviction relief was filed, whether or not the movant was allowed to proceed in forma pauperis. The motion to file a belated appeal was allowed because, but for this clerical error, the notice of appeal was timely filed. White v. State, 373 Ark. 415, 284 S.W.3d 64 (2008).

16-68-604. Affidavit of inability to pay.

CASE NOTES

Notice of Appeal.

Court clerk should have filed a movant's notice of appeal on the day the notice of appeal from the denial of his motion for postconviction relief was filed, whether or not the movant was allowed to proceed in forma pauperis. The motion to file a belated appeal was allowed because, but for this clerical error, the notice of appeal was timely filed. White v. State, 373 Ark. 415, 284 S.W.3d 64 (2008).

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

CHAPTER 81

ARREST

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

16-81-105. Execution of summons and service of process.

CASE NOTES

Territorial Jurisdiction.

Although an Arkansas deputy did not have authority under this section to arrest an arrestee pursuant to an Arkansas arrest warrant at the arrestee's parents' home, which was located in Oklahoma, the deputy was entitled to qualified immunity as to the arrestee's Fourth Amendment claim because it was objectively reasonable for the deputy to have believed that the arrest was taking place in Arkansas. A 911 call from the home was identified as originating from an Arkansas area code and an Arkansas address, the home's mailbox was located in Arkansas, and the arrest warrant stated that the arrestee resided at the home's address in Arkansas. Engleman v. Murray, 546 F.3d 944 (8th Cir. 2008).

16-81-106. Authority to arrest.

(a) An arrest may be made by a certified law enforcement officer or by a private person.

(b) A certified law enforcement officer may make an arrest:

(1) In obedience to a warrant of arrest delivered to him or her; and

(2)(A) Without a warrant, where a public offense is committed in his or her presence or where he or she has reasonable grounds for believing that the person arrested has committed a felony.

(B) In addition to any other warrantless arrest authority granted by law or court rule, a certified law enforcement officer may arrest a person for a misdemeanor without a warrant if the officer has probable cause to believe that the person has committed battery upon another person, the officer finds evidence of bodily harm, and the officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.

(c)(1) A certified law enforcement officer who is outside his or her jurisdiction may arrest without warrant a person who commits an offense within the officer's presence or view if the offense is a felony or a misdemeanor.

(2)(A) A certified law enforcement officer making an arrest under subdivision (c)(1) of this section shall notify the law enforcement agency having jurisdiction where the arrest was made as soon as practicable after making the arrest.

(B) The law enforcement agency shall then take custody of the person committing the offense and take the person before a judge or magistrate.

(3) Statewide arrest powers for certified law enforcement officers will be in effect only when the officer is working outside his or her jurisdiction at the request of or with the permission of the municipal or county law enforcement agency having jurisdiction in the locale where the officer is assisting or working by request.

(4) Any law enforcement agency exercising statewide arrest powers under this section must have a written policy on file regulating the actions of its employees relevant to law enforcement activities outside its jurisdiction.

(d) A private person may make an arrest where he or she has reasonable grounds for believing that the person arrested has committed a felony.

(e) A magistrate or any judge may orally order a certified law enforcement officer or private person to arrest anyone committing a public offense in the magistrate's or judge's presence, which order shall authorize the arrest.

(f) For purposes of this section, the term "certified law enforcement officer" includes a full-time wildlife officer of the Arkansas State Game and Fish Commission so long as the officer shall not exercise his or her authority to the extent that any federal funds would be jeopardized.

(g) The following persons employed as full-time law enforcement officers by the federal, state, county, or municipal government, who are empowered to effect an arrest with or without warrant for violations of the United States Code and who are authorized to carry firearms in the performance of their duties, shall be empowered to act as officers for the arrest of offenders against the laws of this state and shall enjoy the same immunity, if any, to the same extent and under the same circumstances as certified state law enforcement officers:

(1) Federal Bureau of Investigation special agents;

(2) United States Secret Service special agents;
(3) United States Citizenship and Immigration Services special agents, investigators, and patrol officers;
(4) United States Marshals Service deputies;
(5) Drug Enforcement Administration special agents;
(6) United States Postal Inspection Service postal inspectors;
(7) United States Customs and Border Protection special agents, inspectors, and patrol officers;
(8) United States General Services Administration special agents;
(9) United States Department of Agriculture special agents;
(10) Bureau of Alcohol, Tobacco, Firearms and Explosives special agents;
(11) Internal Revenue Service special agents and inspectors;
(12) Certified law enforcement officers of the United States Department of the Interior, National Park Service, and the United States Fish and Wildlife Service;
(13) Members of federal, state, county, municipal, and prosecuting attorneys' drug task forces; and
(14) Certified law enforcement officers of the United States Department of Agriculture, Forest Service.
(h) Pursuant to Article 2.124 of the Texas Code of Criminal Procedure, any certified law enforcement officer of the State of Arkansas or law enforcement officer specified in subsection (g) of this section shall be authorized to act as a law enforcement officer in the State of Texas with the same power, duties, and immunities of a peace officer of the State of Texas who is acting in the discharge of an official duty:
(1) During a time in which:
(A)(i) The law enforcement officer from the State of Arkansas is transporting an inmate or criminal defendant from a county in Arkansas that is on the border of Texas to a hospital or other medical facility in a county in Texas that is on the border between the two (2) states.
(ii) Transportation to such a facility shall be for purposes including, but not limited to, evidentiary testing of that inmate or defendant as is authorized pursuant to laws of the State of Arkansas or for medical treatment; or
(B) The law enforcement officer from the State of Arkansas is returning the inmate or defendant from the hospital or facility in Texas to an adjoining county in Arkansas; and
(2) To the extent necessary to:
(A) Maintain custody of the inmate or defendant while transporting the inmate or defendant; or
(B) Retain custody of the inmate or defendant if the inmate or defendant escapes while being transported.
(i) A certified law enforcement officer trained pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security is authorized to make an arrest in order to enforce federal immigration laws.

History. Crim. Code, §§ 32-35; C. & M. Dig., §§ 2903-2906; Pope's Dig., §§ 3719-3722; Acts 1983, No. 848, § 1; A.S.A. 1947, §§ 43-402 — 43-405; Acts 1987, No. 496, § 1; 1988 (3rd Ex. Sess.), No. 32, § 1; 1989, No. 715, § 1; 1989, No. 846, § 1; 1993, No. 362, § 1; 1993, No. 436, § 1; 1995, No. 719, § 1; 2005, No. 26, § 1; 2005, No. 907, § 4; 2005, No. 1994, § 267; 2009, No. 158, § 1.

Amendments. The 2009 amendment substituted "making" for "make" in (c)(2)(A).

U.S. Code. Federal immigration laws are generally found in title 8 of the U.S. Code.

16-81-113. Warrantless arrest for domestic abuse.

(a)(1)(A) Except as provided in subdivision (a)(3) of this section, when a law enforcement officer has probable cause to believe a person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined in subdivision (b)(1) of this section against a family or household member, the officer may arrest the person without a warrant if the law enforcement officer has probable cause to believe the person has committed those acts within the preceding four (4) hours or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102(14), even if the incident did not take place in the presence of the law enforcement officer.

(B) The arrest of the person shall be considered the preferred action by the law enforcement officer when evidence indicates that domestic abuse has occurred in addition to a violation of the Arkansas Criminal Code, § 5-1-101 et seq.

(2)(A) When a law enforcement officer receives conflicting accounts of an act of domestic abuse involving family or household members, the law enforcement officer shall evaluate each account separately to determine if one (1) party to the act of domestic abuse was the predominant aggressor.

(B)(i) When determining if one (1) party to an act of domestic abuse is the predominant aggressor, a law enforcement officer shall consider the following factors based upon his or her observation:

(a) Statements from parties to the act of domestic abuse and other witnesses;

(b) The extent of personal injuries received by parties to the act of domestic abuse;

(c) Evidence that a party to the act of domestic abuse acted in self-defense; or

(d) Prior complaints of domestic abuse if the history of prior complaints of domestic abuse can be reasonably ascertained by the law enforcement officer.

(ii) A law enforcement officer may consider any other relevant factors when determining if one (1) party to an act of domestic abuse is the predominant aggressor.

(3)(A) When a law enforcement officer has probable cause to believe a person that is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a felony under the laws of this state, the law enforcement officer shall

arrest the person who was the predominant aggressor with or without a warrant if the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the preceding four (4) hours, or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(B)(i) When a law enforcement officer has probable cause to believe a person who is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a misdemeanor under the laws of this state, the arrest with or without a warrant of the person who was the predominant aggressor shall be considered the preferred action by the law enforcement officer if there is reason to believe that there is an imminent threat of further injury to any party to the act of domestic abuse and the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the preceding four (4) hours or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(ii) When a law enforcement officer has probable cause to believe a person who is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a misdemeanor under the laws of this state, the law enforcement officer may arrest the person without a warrant if the law enforcement officer has probable cause to believe the person has committed those acts within the preceding four (4) hours, or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(4) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse shall have immunity from civil liability.

(b) As used in this section:

(1) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state; and

(2) "Family or household member" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any child residing in the household, persons who have resided or cohabited together presently or in the past, persons who have or have had a child in common, and persons who have been in a dating relationship together presently or in the past; and

(3)(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals which shall be determined by examining the following factors:

(i) The length of the relationship;

(ii) The type of the relationship; and

(iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" shall not include a casual relationship or ordinary fraternization in a business or social context between two (2) individuals.

(c)(1) Any person arrested under the provisions of this section shall be taken before a judicial officer without unnecessary delay.

(2) The judicial officer shall conduct a pretrial release inquiry of the person.

(d) The inquiry should take the form of an assessment of factors relevant to the release decision such as:

(1) The person's employment status, history, and financial condition;

(2) The nature and extent of his or her family relationships;

(3) His or her past and present residence;

(4) His or her character and reputation;

(5) Persons who agree to assist him or her in attending court at the proper times;

(6) The nature of the charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;

(7) The person's prior criminal record, if any, and if he or she previously has been released pending trial, whether he or she appears as required;

(8) Any facts indicating the possibility of violations of law if the person is released without restrictions; and

(9) Any other facts tending to indicate that the person has strong ties to the community and is not likely to flee the jurisdiction of the court.

(e) The judicial officer may impose one (1) or more of the following conditions of release:

(1) Placing the person under the care of a qualified person or organization agreeing to supervise the person and assist him or her in appearing in court;

(2) Imposing reasonable restrictions on the activities, movements, associations, and residences of the person; and

(3) Imposing any other reasonable restrictions to ensure the appearance of the person at future judicial hearings.

History. Acts 1991, No. 268, §§ 1, 2; 1999, No. 1550, § 1; 2001, No. 1421, § 1; 2001, No. 1678, § 3; 2005, No. 1875, § 3; 2007, No. 204, § 1.

Amendments. The 2007 amendment added present (a)(2)(B) through (a)(4), and redesignated the existing provisions accordingly; added "Except as provided in subdivision (a)(3) of this section" at the beginning of present (a)(1)(A); rewrote present (a)(2)(A); and made related changes.

16-81-115. Certified law enforcement officers from adjoining states.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

16-81-116. Warrantless arrest for violation of interference with emergency communication in the first degree, § 5-60-124, or interference with emergency communication in the second degree, § 5-60-125.

If a law enforcement officer has probable cause to believe a person has violated § 5-60-124 or § 5-60-125, the officer may arrest the person without a warrant even if the incident did not take place in the presence of the officer if the officer has probable cause to believe the person has violated the section within the preceding:

(1) Four (4) hours; or

(2) Twelve (12) hours in cases involving physical injury as defined in § 5-1-102(14).

History. Acts 2009, No. 1456, § 1.

Subchapter 2 — Stop and Search

16-81-203. Grounds to reasonably suspect.

RESEARCH REFERENCES

U. Ark. Little Rock. L. Rev. Annual Survey of Case Law, Criminal Law, 28 U. Ark. Little Rock L. Rev. 700.

CASE NOTES

Analysis

Informant's Information.
"Reasonably Suspect."

Informant's Information.

Motion to suppress evidence was improperly granted because, where police had known an informant to give reliable information in the past, and accurate information was received from the informant about defendant and his vehicle, officers had specific, particularized, and articulable reasons for thinking that defendant was involved in criminal activity, which justified a stop under Ark. R. Crim. P. 3.1. Because the officers had reasonable suspicion to stop and detain the vehicle, any pretext on the part of the officers was irrelevant; moreover, the officers did not need any additional reasonable suspicion to justify a canine sniff, which was not a search under the Fourth Amendment. State v. Harris, 372 Ark. 492, 277 S.W.3d 568 (2008).

"Reasonably Suspect."

Trial court properly denied defendant's motion to suppress because an officer had reasonable suspicion that defendant was carrying a weapon and, therefore, a frisk of defendant was not an illegal search; the officer testified that defendant's shrugged shoulders, no eye contact, and tightening up indicated to the officer that defendant was lying about not having any weapons

or anything illegal. Gilbert v. State, 2010 Ark. App. 857, — S.W.3d — (2010).

CHAPTER 82

SEARCH AND SEIZURE

Subchapter 2 — Warrants

16-82-201. Issuance of search warrants upon oral testimony.

CASE NOTES

Jurisdiction.

Osceola District Court judge had jurisdiction to issue a search warrant for a residence in the Chickasawba District. Wagner v. State, 2010 Ark. 389, — S.W.3d — (2010).

CHAPTER 84

BAIL GENERALLY

SUBCHAPTER.

2. Forfeiture.

Subchapter 1 — General Provisions

16-84-114. Surrender of defendant.

CASE NOTES

License Revocation.

Circuit court did not err in affirming the revocation of a bail bond agent's license by the Arkansas Professional Bail Bondsman Licensing Board for violating §§ 17-19-101 et seq., because there was substantial evidence before the Board from which it could conclude that the agent had knowledge of and authorized a nonlicensed individual's actions; the agent instructed the individual, who was hired by the owner of a bonding company to perform office work, to "catch" or apprehend someone in violation of subdivision (b)(2) of this section, and the agent expressly testified that the individual acted pursuant to his direction. Hester v. Ark. Prof'l Bail Bondsman Licensing Bd., 2011 Ark. App. 389, — S.W.3d — (2011).

Subchapter 2 — Forfeiture

SECTION.

16-84-201. Action on bond in district courts.

SECTION.

16-84-207. Action on bail bond in circuit courts.

16-84-201. Action on bond in district courts.

(a)(1)(A) If the defendant fails to appear for trial or judgment, or at any other time when his or her presence in district court may be lawfully required, or to surrender himself or herself in execution of the judgment, the district court may direct the fact to be entered on

the minutes and shall promptly issue an order requiring the surety to appear, on a date set by the district court not more than one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, to show cause why the sum specified in the bail bond or the money deposited in lieu of bail should not be forfeited.

(B) The one-hundred-twenty-day period in which the defendant must be surrendered or apprehended under subdivision (c)(2) of this section begins to run from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety.

(2) The order shall also require the officer who was responsible for taking of bail to appear unless:

(A) The surety is a bail bondsman; or

(B) The officer accepted cash in the amount of bail.

(b) The appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant.

(c)(1) If the defendant is surrendered or arrested, or good cause is shown for his or her failure to appear before judgment is entered against the surety, the district court shall exonerate a reasonable amount of the surety's liability under the bail bond.

(2) However, if the surety causes the apprehension of the defendant or the defendant is apprehended within one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, a judgment or forfeiture of bond may not be entered against the surety, except as provided in subsection (e) of this section.

(d) If after one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, the defendant has not surrendered or been arrested, the bail bond or money deposited in lieu of bail may be forfeited without further notice or hearing.

(e) If the defendant is located in another state and the location is known within one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, the appropriate law enforcement officers shall cause the arrest of the defendant and the surety shall be liable for the cost of returning the defendant to the district court in an amount not to exceed the face value of the bail bond.

(f)(1) In determining the extent of liability of the surety on a bond forfeiture, the court, without further notice or hearing, may take into consideration the expenses incurred by the surety in attempting to locate the defendant and may allow the surety credit for the expenses incurred.

(2) To be considered by the court, information concerning expenses incurred in attempting to locate the defendant should be submitted to the court by the surety no later than the one-hundred-twentieth day

from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety.

(g) Notwithstanding any law to the contrary, a district court may suspend a bail bond company's or agent's ability to issue bail bonds in its court if the bail bond company or agent fails to comply with an order of the district court or fails to pay forfeited bonds in accordance with a district court's order.

History. Acts 1989, No. 417, § 5; 1991, No. 991, § 1; 1993, No. 841, § 1; 1995, No. 1106, § 1; 1999, No. 567, § 5; 2003, No. 752, § 2; 2003, No. 1572, § 1; 2009, No. 633, § 16.

Amendments. The 2009 amendment inserted "from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety" in (d), and substituted the same language for "after the issuance of the order" in (a)(1)(A), for "of receipt of written notification to the surety of the defendant's failure to appear" in (c)(2), and for "after the date of receipt of written notification to the surety of the defendant's failure to appear" in (e) and (f)(2); added (g); and made minor stylistic changes.

16-84-207. Action on bail bond in circuit courts.

(a) If a bail bond is granted by a judicial officer, it shall be conditioned on the defendant's appearing for trial, surrendering in execution of the judgment, or appearing at any other time when his or her presence in circuit court may be lawfully required under Rule 9.5 or Rule 9.6 of the Arkansas Rules of Criminal Procedure, or any other rule.

(b)(1) If the defendant fails to appear at any time when the defendant's presence is required under subsection (a) of this section, the circuit court shall enter this fact by written order or docket entry, adjudge the bail bond of the defendant or the money deposited in lieu thereof to be forfeited, and issue a warrant for the arrest of the defendant.

(2) The circuit clerk shall:

(A) Notify the sheriff and each surety on the bail bond that the defendant should be surrendered to the sheriff as required by the terms of the bail bond; and

(B) Immediately issue a summons on each surety on the bail bond requiring the surety to personally appear on the date and time stated in the summons to show cause why judgment should not be rendered for the sum specified in the bail bond on account of the forfeiture.

(c)(1)(A) If the defendant is apprehended and brought before the circuit court within seventy-five (75) days of the date notification is sent under subdivision (b)(2)(A) of this section, then no judgment of forfeiture may be entered against the surety.

(B) The surety shall be liable for the cost of returning the defendant to the circuit court in an amount not to exceed the face amount of the bond.

(2)(A) If the defendant is apprehended and brought before the circuit court after the seventy-five-day period under subdivision (c)(1) of this section, the circuit court may exonerate the amount of the surety's

liability under the bail bond as the circuit court determines in its discretion and, if the surety does not object, enter judgment accordingly against the surety.

(B) In determining the extent of liability of the surety on the bond, the circuit court may take into consideration the actions taken and the expenses incurred by the surety to locate the defendant, the expenses incurred by law enforcement officers to locate and return the defendant, and any other factors the circuit court finds relevant.

(3) The appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant.

(d)(1) If the surety does not consent to the entry of judgment in the amount determined under subsection (c) of this section, or if the defendant has not surrendered or been brought into custody, then at the time of the show cause hearing unless continued to a subsequent time, the circuit court shall determine the surety's liability and enter judgment on the forfeited bond.

(2) The circuit court may exercise its discretion in determining the amount of the judgment and may consider the factors listed in subsection (c) of this section.

(e)(1) No pleading on the part of the state shall be required in order to enforce a bond under this section.

(2) The summons required under subsection (b) of this section shall be made returnable and shall be executed as in civil actions, and the action shall be docketed and shall proceed as an ordinary civil action.

(3) The summons shall be directed to and served on the surety in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, and the surety's appearance pursuant to the summons shall be in person and not by filing an answer or other pleading.

(f) Notwithstanding any law to the contrary, a circuit court may suspend a bail bond company's or agent's ability to issue bail bonds in its court if the bail bond company or agent fails to comply with an order of the circuit court or fails to pay forfeited bonds in accordance with a circuit court's order.

History. Acts 2003, No. 752, § 1; 2003, No. 1472, § 1; 2009, No. 290, § 1.

Amendments. The 2009 amendment, in (e)(3), substituted "shall" for "may," deleted "an agent of" preceding "the surety," and inserted "in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure."

CASE NOTES

Analysis

Forfeiture of Bond.
Issuance of Summons.
Strict Compliance Required.

Forfeiture of Bond.

Trial court properly exercised jurisdiction and ordered forfeiture of a bond where there was no requirement in subdivision (e)(2) of this section that the state file a separate civil action; in fact, subdivision (e)(1) stated that no pleading on the state's part was required to enforce a bond. First Ark. Bail Bonds, Inc. v. State, 102 Ark. App. 282, 284 S.W.3d 115 (2008).

Issuance of Summons.

Trial court erred in ruling that a bond company had forfeited a bond when a

summons was not immediately issued for a show cause hearing, as required by subdivision (b)(2)(B) of this section. First Ark. Bail Bonds, Inc. v. State, 373 Ark. 470, 284 S.W.3d 484 (2008).

Strict Compliance Required.

Because strict compliance with subdivision (b)(2)(B) of this rule was not had because summons was not issued "immediately" as required, a circuit court's judgment of forfeiture against a bail bond company was reversed, and the matter was remanded. First Ark. Bail Bonds, Inc. v. State, 373 Ark. 470, 284 S.W.3d 484 (2008).

Because a circuit court's forfeiture of a bond failed to strictly comply with this section, a forfeiture judgment against a bail bond company was reversed for the reasons set forth in a prior opinion of the court in a similar case, and the matter was remanded for an order consistent with the court's opinion. First Ark. Bail Bonds, Inc. v. State, 373 Ark. 468, 284 S.W.3d 483 (2008).

CHAPTER 85

PRETRIAL PROCEEDINGS

SUBCHAPTER.

Subchapter 3 — Information and Bill of Particulars

16-85-301. Bill of particulars.

CASE NOTES

Sufficiency.

Defendant was not entitled to a bill of particulars, pursuant to subsection (a) of this section; a bill of particulars as to the precise time offenses were committed was not necessary because time was not material to allegations of rape and sexual assault in the second degree. Wallis v. State, 2010 Ark. App. 238, — S.W.3d — (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 259 (May 6, 2010).

Subchapter 4 — Indictment Generally

16-85-403. Contents.

CASE NOTES

Sufficiency.

State did not need to track the language of § 5-13-211 in order to charge defendant because merely citing the statute was sufficient; the state did not need to amend the information because it correctly cited the statute that defendant was charged with violating, and the additional language in the information was in the nature of explanatory text that was superfluous and did not make it fatally defective such as to warrant reversal. Barnes v. State, 94 Ark. App. 321, 230 S.W.3d 311 (2006).

16-85-407. Amendment of indictment and filing of bill of particulars.

CASE NOTES

Analysis

No Effect on Jurisdiction.
Prejudice or Surprise.
Validity of Amendment.

No Effect on Jurisdiction.

Defendant was properly convicted of rape despite his claim that he was charged with first-degree sexual assault, and the information against him was not amended. This section related to matters of notice and prejudice and provided a criminal defendant with protection against being prejudiced through surprise; thus, it was procedural in nature, not jurisdictional, and a violation of the statute did not divest the trial court of its authority to convict and sentence a defendant. VanOven v. State, 2011 Ark. App. 46, — S.W.3d — (2011).

Prejudice or Surprise.

There was no violation of this section when an information in a capital murder trial was amended a few days before trial to include a premeditation and deliberation element because defendant was not surprised by such; her own admissions showed that she acted in a premeditated and deliberative manner when she shot her husband as he slept, she had wanted to leave for a long time, and she fled with some of his belongings. Therefore, there was nothing wrong with including the premeditation and deliberation elements in the jury instructions. Terry v. State, 371 Ark. 50, 263 S.W.3d 528 (2007).

Validity of Amendment.

Even though a prosecutor was not allowed to amend a felony information under § 16-85-407 in a theft of property case to show the value of a vehicle stolen since that changed the class of the crime, there was no reversible error because the sentence imposed was less than the maximum for either the amended or the original charge. Therefore, defendant was not prejudiced. Ward v. State, 97 Ark. App. 294, 248 S.W.3d 489 (2007).

Circuit court did not err when it allowed the state to amend a felony information to include a habitual-offender allegation on the morning of defendant's trial for possession of a firearm by a felon. because the amendment did not change the nature or degree of the crime, but simply authorized a more severe punishment. Glaze v. State, 2011 Ark. App. 283, — S.W.3d — (2011).

State's amendment of an information did not violate this section because the amendment did not constitute a severance of offenses under Ark. R. Crim. P. 22.1(c), and the evidence would have been introduced in any case as part of the events leading up to the shooting whether it was included in the charging instrument or not; the only offense charged in the case was first-degree battery under § 5-13-201(a)(3), and the amendment did not change the nature or degree of the crime but merely clarified the manner in which the offense was committed. Reed v. State, 2011 Ark. App. 352, — S.W.3d — (2011).

Subchapter 5 — Grand Jury Proceedings

SECTION.
16-85-510. Disclosure of media sources.

16-85-510. Disclosure of media sources.

Before any editor, reporter, or other writer for any newspaper, periodical, radio station, television station, or Internet news source, or publisher of any newspaper, periodical, or Internet news source, or manager or owner of any radio station shall be required to disclose to any grand jury or to any other authority the source of information used

as the basis for any article he or she may have written, published, or broadcast, it must be shown that the article was written, published, or broadcast in bad faith, with malice, and not in the interest of the public welfare.

History. Init. Meas. 1936, No. 3, § 15, Acts 1937, p. 1384; Pope's Dig., § 3828; Acts 1949, No. 254, § 1; A.S.A. 1947, § 43-917; Acts 2011, No. 799, § 1.

Amendments. The 2011 amendment substituted "media" for "newspaper, periodical, or radio station" in the section heading; and inserted "television station, or Internet news source" and "or Internet news source."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. The Ben J. Altheimer Symposium: A Reporter's Privilege: Legal Fact or Fiction: Article: The Reporter's Privilege in Arkansas: An Overview with Commentary, 29 U. Ark. Little Rock L. Rev. 1.

Subchapter 7 — Arraignment and Pleading Generally

SECTION.

16-85-709. Pleas generally.

RESEARCH REFERENCES

ALR. Adequacy of Defense Counsel's Representation of Criminal Client Regarding Guilty Pleas — Probation, Parole, or Pardon Possibilities. 31 A.L.R.6th 49.

16-85-714. No contact orders.

(a) As used in this section, a "no contact order" is an order issued by a court to a defendant at or after arraignment on charges that prohibits the defendant from contacting directly or indirectly a person in any manner or from being within a certain distance of the person's home or place of employment.

(b)(1) A court may issue a no contact order under this section in addition to any other condition of release from custody that is imposed by the court if it appears that there exists a danger that a defendant will commit a serious crime, seek to intimidate a witness, or otherwise unlawfully interfere with the orderly administration of justice.

(2) The no contact order issued under this section shall be in effect until it is modified or terminated by the court.

(3) A no contact order issued under this section may contain, without limitation, the following:

(A) The reasons the court issued the no contact order in specific terms and description in reasonable detail of the purpose of the order;

(B)(i) A prohibition against the defendant's approaching or communicating with a particular person or class of persons, either through a third party or by telephone, electronic communication, or in writing.

(ii) A no contact order issued under this section shall not be deemed to prohibit any lawful or ethical activity of defendant's counsel;

(C) A prohibition against the defendant's going to certain described geographical areas or premises, including an imposition of a restriction that the defendant stay at least one thousand five hundred feet (1,500') from a person's location;

(D) A prohibition against the defendant's possessing a dangerous weapon or engaging in certain described activities, including the ingestion of alcohol or certain drugs; and

(E) A requirement that the defendant report regularly to and remain under the supervision of an officer of the court.

(4) When a no contact order is issued under this section, the court shall inform the defendant of the penalties for failure to comply with the conditions or terms of the order.

(5) All terms of a no contact order issued under this section shall be reduced to writing, and a copy shall be given to the defendant.

(6)(A) If a defendant violates a no contact order issued under this section, the court shall issue a warrant directing that the defendant be arrested and immediately taken before any court having jurisdiction.

(B) The court shall then have authority to detain the defendant for a period of time not to exceed twenty-four (24) hours, unless the violation occurs on a Friday or a holiday, in which case the time period shall be forty-eight (48) hours, during which time the prosecuting attorney shall file a petition to revoke the defendant's appearance bond or modify the conditions of the defendant's release, alleging the following:

(i) That the defendant has knowingly violated the terms of a no contact order issued under this section;

(ii) That relevant information has become known to the prosecuting attorney warranting the modification of or revocation of the defendant's appearance bond; and

(iii) That a law enforcement officer had reasonable grounds to believe that the defendant violated the terms of a no contact order issued under this section and that it was impracticable to secure an arrest warrant at the time of arrest.

(C)(i) The defendant shall be entitled to a hearing on the petition to modify or revoke the defendant's appearance bond within forty-eight (48) hours of the defendant's appearance before the court, unless the violation occurs on a Friday or a holiday, in which case the hearing shall be within seventy-two (72) hours.

(ii) If after a hearing the court finds that the defendant knowingly violated the terms of a no contact order issued under this section, the court may impose different or additional conditions of release or revoke his or her appearance bond.

(c)(1) A court may set the duration of a no contact order issued under this section for an additional period of time after the adjudication of the

offense for which the defendant was originally charged if it determines the additional period of time is necessary to protect the safety of a person, persons residing with the person, or members of the person's immediate family.

(2) The duration or extension of the no contact order shall not be for more than one (1) year from the date of issuance or, if the original charge is adjudicated with a finding of the defendant's guilt, from the date of sentencing.

(d) Upon conviction, violation of a no contact order issued under this section is a Class A misdemeanor.

History. Acts 2011, No. 589, § 1.

CHAPTER 87

PUBLIC DEFENDERS

SUBCHAPTER.

Subchapter 2 — Arkansas Public Defender Commission

SECTION.

A.C.R.C. Notes. Acts 2007, No. 1223, § 12, provided: "The Public Defender Commission shall utilize Dependency-Neglect Appeals Attorneys exclusively to write appeals in dependency-neglect cases. The provisions of this section shall be in effect only from July 1, 2007 through June 30, 2009."

Acts 2010, No. 285, § 12, provided: "DUTIES OF DEPENDENCY-NEGLECT APPEALS ATTORNEY. The Public Defender Commission shall utilize Dependency-Neglect Appeals Attorneys exclusively to write appeals in dependency-neglect cases.

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

Acts 2011, No. 1066, § 12, provided: "DUTIES OF DEPENDENCY-NEGLECT APPEALS ATTORNEY. The Public Defender Commission shall utilize Dependency-Neglect Appeals Attorneys exclusively to write appeals in dependency-neglect cases.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Effective Dates. Acts 2011, No. 39, § 2: Feb. 16, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the proper funding of defense counsel for indigent persons is of manifest importance; that a recent decision by the Arkansas Supreme Court has cast doubt on how the expenses of privately retained defense attorneys are to be paid, if at all; and that this act is immediately necessary because there is a question how the Arkansas Public Defender Commission should deal with the issue of privately retained attorneys. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto."

16-87-201. Definitions.

CASE NOTES

Analysis

Expenses of Defendant Represented by Retained
—Counsel

Expenses of Defendant Represented by Retained

—Counsel

Request for a writ of prohibition filed by the Arkansas Public Defender Commission (APDC) was denied because, pursuant to § 16-87-212, the circuit court clearly had jurisdiction to order APDC to make payments for expenses for an indigent defendant even though defendant was represented by retained counsel, not the APDC. Ark. Pub. Defender Comm'n v. Pulaski County Circuit Court, Fourth Div., 2010 Ark. 224, — S.W.3d — (2010), rehearing denied, Ark. Pub. Defender Comm'n v. Wright, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 368 (June 24, 2010).

Cited: Jones v. State, 367 Ark. 476, 241 S.W.3d 268 (2006).

16-87-212. Court fees and expenses.

(a)(1) The Arkansas Public Defender Commission is authorized to pay for certain expenses regarding the defense of indigents.

(2)(A) The expenses shall include, but shall not necessarily be limited to, fees for counsel appointed by the court, expert witnesses, temporary investigators, testing, and travel.

(B)(i) Expenses shall not include attorney's fees for counsel privately retained for the benefit of an indigent defendant for that defendant's defense.

(ii) The commission may authorize the payment of expenses of counsel privately retained for the benefit of an indigent defendant, provided counsel complies with the standards set by the commission under this subchapter governing counsel appointed by the court or employed or contracted by the commission.

(3)(A) Whenever a judge orders an authorized payment in a case involving an indigent person, a copy of the order accompanied by a detailed explanation of services rendered, time spent, and expenses incurred shall be transmitted to the commission, and the commission shall set the amount of compensation.

(B) Orders as authorized throughout this chapter shall be paid by the commission provided sufficient funds are available.

(b)(1) With the approval of the Executive Director of the Arkansas Public Defender Commission, trial public defenders, appointed private attorneys, and the Capital, Conflicts, and Appellate Office are authorized to utilize the services of the State Crime Laboratory for pathology and biology, toxicology, criminalistics, raw drug analysis, latent fingerprint identification, questioned documents examination, firearms and

toolmarks identification, and in other such areas as the trial judge may deem necessary and appropriate.

(2) If approved by the executive director, the State Crime Laboratory shall provide the requested services.

(c) At the discretion of the commission, capital murder cases and all proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

History. Acts 1993, No. 1193, § 10; 1997, No. 788, § 22; No. 1341, § 22; 2001, No. 1343, § 2; 2001, No. 1799, § 6; 2011, No. 39, § 1.

Amendments. The 2011 amendment inserted (a)(2)(B); substituted "counsel appointed by the court" for "appointed counsel" in (a)(2)(A); and, in (b)(1), substituted "Executive Director of the Arkansas Public Defender Commission" for "executive director" and deleted "hereby" following "Appellate Office are."

CASE NOTES

Analysis

Expenses of Defendant Represented by Retained.
—Counsel.

Expenses of Defendant Represented by Retained.

—Counsel.

Request for a writ of prohibition filed by the Arkansas Public Defender Commission (APDC) was denied because, pursuant to this section, the circuit court clearly had jurisdiction to order APDC to make payments for expenses for an indigent defendant even though defendant was represented by retained counsel, not the APDC. Ark. Pub. Defender Comm'n v. Pulaski County Circuit Court, Fourth Div., 2010 Ark. 224, — S.W.3d — (2010), rehearing denied, Ark. Pub. Defender Comm'n v. Wright, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 368 (June 24, 2010).

16-87-213. Certificate of indigency.

A.C.R.C. Notes. Acts 2009, No. 1319, § 9, provided: "FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code § 5-4-303(g) and Arkansas Code 16-87-213 the monies collected by the courts under the authority of § 5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

"In the event that the law requires that the fees levied under § 5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code § 5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Acts 2010, No. 285, § 9, provided: "FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code § 5-4-303(g) and Arkansas Code 16-87-213 the monies collected by the courts under the authority of § 5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

"In the event that the law requires that the fees levied under § 5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code § 5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

Acts 2011, No. 1066, § 9, provided: "Unless specified otherwise in Arkansas Code § 5-4-303(g) and Arkansas Code 16-87-213 the monies collected by the courts

under the authority of § 5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

"In the event that the law requires that the fees levied under § 5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code § 5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

16-87-216. Juvenile Ombudsman Division.

A.C.R.C. Notes. Acts 2009, No. 1418, § 10, provided: "TRANSFER OF FUNDS FOR THE JUVENILE OMBUDSMAN PROGRAM. The Department of Human Services shall provide funding in an amount not to exceed $240,000 for the fiscal year ending June 30, 2010 for the Juvenile Ombudsman Program described in ACA 16-87-216. Upon request by the Executive Director of the Arkansas Public Defender Commission, the Chief Fiscal Officer of the State shall transfer an amount not to exceed $240,000 for the fiscal year ending June 30, 2010 from an account designated by the Director of the Department of Human Services to the State Central Services Fund as a direct revenue to fund the Juvenile Ombudsman Program."

Acts 2010, No. 228, § 10, provided: "TRANSFER OF FUNDS FOR THE JUVENILE OMBUDSMAN PROGRAM. The Department of Human Services shall provide funding in an amount not to exceed $240,000 for the fiscal year ending June 30, 2011 for the Juvenile Ombudsman Program described in ACA 16-87-216. Upon request by the Executive Director of the Arkansas Public Defender Commission, the Chief Fiscal Officer of the State shall transfer an amount not to exceed $240,000 for the fiscal year ending June 30, 2011 from an account designated by the Director of the Department of Human Services to the State Central Services Fund as a direct revenue to fund the Juvenile Ombudsman Program."

Acts 2011, No. 1071, § 10, provided: "TRANSFER OF FUNDS FOR THE JUVENILE OMBUDSMAN PROGRAM. The Department of Human Services shall provide funding in an amount not to exceed $240,000 for the fiscal year ending June 30, 2012 for the Juvenile Ombudsman Program described in ACA 16-87-216. Upon request by the Executive Director of the Arkansas Public Defender Commission, the Chief Fiscal Officer of the State shall transfer an amount not to exceed $240,000 for the fiscal year ending June 30, 2012 from an account designated by the Director of the Department of Human Services to the State Central Services Fund as a direct revenue to fund the Juvenile Ombudsman Program."

Subchapter 3 — Funding

SECTION.

16-87-302. Funding of public defenders.

(a) The Arkansas Public Defender Commission shall be responsible for the payment of the following:

(1) The salaries of public defenders;

(2) The salaries of secretaries and other support staff of the public defender's office;

(3) The payment of the costs of certain expenses, as authorized by § 16-87-212.

(b) Each county or counties within a judicial district shall be responsible for the payment of the following:

(1)(A) The cost of facilities, equipment, supplies, and other office expenses necessary to the effective and efficient operation of the public defender's office.

(B) Funding for these expenditures may be from:

(i) A county administration of justice fund;

(ii) A county's general fund;

(iii) A county's public defender fund;

(iv) A county's indigent defense fund;

(v) A county's public defender investigator fund; or

(vi) Any other fund authorized by law for that purpose.

(C) These expenditures shall comply with an itemized, line-item budget appropriated by the quorum court; and

(2) The compensation of additional personnel within the office of the public defender, when approved in advance by the quorum court.

History. Acts 1997, No. 788, § 12; 1997, No. 1341, § 12; 2001, No. 1799, § 8; 2011, No. 1201, § 1.

Amendments. The 2011 amendment added (b)(1)(B) and (b)(1)(C).

CHAPTER 88

JURISDICTION AND VENUE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2007, No. 663, § 56: Jan. 1, 2012.

16-88-101. Jurisdiction of courts for certain offenses generally. [Effective until January 1, 2012.]

(a) The jurisdiction of the various courts of this state for the trial of offenses shall be as follows:

(1) The Senate shall have exclusive jurisdiction of impeachment;

(2) The Supreme Court shall have general supervision and control over all inferior courts in criminal cases;

(3) The circuit court shall have original jurisdiction, exclusive of the district court and city court, for the trial of offenses defined as felonies by state law and shall have original jurisdiction concurrent with the district court and city court for the trial of offenses defined as misdemeanors by state law;

(4) The district court shall have original jurisdiction, exclusive of the circuit court, for the trial of violations of ordinances of any town, city, or county within the territorial jurisdiction of the district court and shall have original jurisdiction concurrent with the circuit court for the trial of offenses defined as misdemeanors and violations by state law and committed within the territorial jurisdiction of the district court; and

(5) The city court shall have original jurisdiction, exclusive of the circuit court, for the trial of violations of ordinances of the city in which the city court is located and shall have original jurisdiction concurrent with the circuit court for the trial of offenses defined as misdemeanors by state law and committed within the city in which the circuit court is located.

(b) Where an indictment is found in the circuit court for an offense within its jurisdiction, the circuit court shall have jurisdiction of all the degrees of the offense and of all the offenses included in the one (1) charge, although some of those degrees or included offenses are within the exclusive jurisdiction of an inferior or local court.

(c) A district court may issue arrest warrants and search warrants and may perform other pretrial functions, as authorized by the Arkansas Rules of Criminal Procedure, in the prosecution of a person for an offense within the exclusive jurisdiction of the circuit court.

History. Crim. Code, §§ 10, 11; Acts 1871, No. 49, § 1 [10], p. 255; C. & M. Dig., § 2863; Pope's Dig., § 3679; A.S.A. 1947, §§ 43-1405, 43-1406; Acts 2003, No. 1185, §§ 207, 208; 2009, No. 398, § 1; 2011, No. 1218, § 11.

Publisher's Notes. For text of section effective January 1, 2012, see the following version.

Amendments. The 2009 amendment substituted "any town, city, or county within the territorial jurisdiction of the district court" for "the city or county in which the district court is located" in (a)(4), and made a related change.

The 2011 amendment inserted "and violations" in (a)(4).

CASE NOTES

Search Warrants.

Osceola District Court judge had jurisdiction to issue a search warrant for a residence in the Chickasawba District. Wagner v. State, 2010 Ark. 389, — S.W.3d — (2010).

16-88-101. Jurisdiction of courts for certain offenses generally. [Effective January 1, 2012.]

(a) The jurisdiction of the various courts of this state for the trial of offenses shall be as follows:

(1) The Senate shall have exclusive jurisdiction of impeachment;

(2) The Supreme Court shall have general supervision and control over all inferior courts in criminal cases;

(3) The circuit court shall have original jurisdiction, exclusive of the district court, for the trial of offenses defined as felonies by state law and shall have original jurisdiction concurrent with the district court for the trial of offenses defined as misdemeanors by state law; and

(4) The district court shall have original jurisdiction, exclusive of the circuit court, for the trial of violations of ordinances of any town, city, or county within the territorial jurisdiction of the district court and shall have original jurisdiction concurrent with the circuit court for the trial of offenses defined as misdemeanors and violations by state law and committed within the territorial jurisdiction of the district court.

(b) Where an indictment is found in the circuit court for an offense within its jurisdiction, the circuit court shall have jurisdiction of all the degrees of the offense and of all the offenses included in the one (1) charge, although some of those degrees or included offenses are within the exclusive jurisdiction of the district court.

(c) A district court may issue arrest warrants and search warrants and may perform other pretrial functions, as authorized by the Arkansas Rules of Criminal Procedure, in the prosecution of a person for an offense within the exclusive jurisdiction of the circuit court.

History. Crim. Code, §§ 10, 11; Acts 1871, No. 49, § 1 [10], p. 255; C. & M. Dig., § 2863; Pope's Dig., § 3679; A.S.A. 1947, §§ 43-1405, 43-1406; Acts 2003, No. 1185, §§ 207, 208; 2007, No. 663, § 53; 2009, No. 398, § 1; 2011, No. 1218, §§ 11, 12.

Publisher's Notes. For text of section effective until January 1, 2012, see the preceding version.

Amendments. The 2011 amendment inserted "and violations" in (a)(4).

16-88-105. Territorial jurisdiction of certain courts generally. [Effective until January 1, 2012.]

CASE NOTES

Circuit Court.

Pursuant to State v. Osborn, 345 Ark. 196, 45 S.W.3d 373 (2001), and § 16-88-108(c), jurisdiction in defendant's case was proper in either Calhoun County or Dallas County; had defendant not committed the crimes of aggravated robbery and kidnapping in Calhoun County, he would not have been placed into custody in Dallas County, he could not have escaped from that custody, and the prosecution in Calhoun County would not have been delayed. Avery v. State, 93 Ark. App. 112, 217 S.W.3d 162 (2005).

16-88-105. Territorial jurisdiction of certain courts generally. [Effective January 1, 2012.]

(a) The jurisdiction of the Senate and Supreme Court embraces the whole state.

(b) The local jurisdiction of circuit courts shall be of offenses committed within the respective counties in which they are held.

(c) The local jurisdiction of district courts shall be of offenses committed within the limits of the jurisdiction of the courts, as prescribed by the statutes creating or regulating them.

History. Crim. Code, §§ 14-16; C. & M. Dig., §§ 2864-2866; Pope's Dig., §§ 3680-3682; A.S.A. 1947, §§ 43-1407 — 43-1409; Acts 2007, No. 663, § 54.

Publisher's Notes. For text of section effective until January 1, 2012, see the bound volume.

Amendments. The 2007 amendment deleted "and justices' courts" following "circuit courts" in (b), and substituted "district courts" for "police or city courts" in (c).

Effective Dates. Acts 2007, No. 663, § 56, as amended by Acts 2009, No. 345, § 7, provided:

"(a) Sections 2 through 15 of this act are effective January 1, 2008.

"(b) Sections 16 through 50 and 52 through 55 of this act are effective January 1, 2012.

"(c) Section 51 of Act 663 of 2007 is effective January 1, 2012, except:

"(1) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-933, establishing the Cleburne County District Court and departments of that court, codified as § 16-17-936 is effective July 1, 2009; and

"(2) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-950, establishing the St. Francis County District Court and departments of that court, codified as § 16-17-954 is effective July 1, 2009."

16-88-108. Jurisdiction of counties — Offenses generally.

CASE NOTES

Jurisdiction.

While defendant worked for the sheriff's department, she was authorized to use the department's credit card only for county purchases; her use of the card for personal purchases was sufficient to support her conviction for fraudulently using a credit card in violation of § 5-37-207(a)(4). Because it was undisputed that the purchases took place in Pulaski County, Arkansas, the Pulaski County Circuit Court had jurisdiction over the case in accordance with subsection (c) of this section. Baker v. State, 2009 Ark. App. 788, — S.W.3d — (2009).

16-88-116. Traffic citations issued within a town or city with a district court — Placement on docket. [Effective January 1, 2012.]

All traffic citations issued within the boundaries of a town or city of this state which has a district court shall be placed on the docket of the district court of that town or city, unless the presiding judge of that court authorizes a transfer to another court exercising jurisdiction over the area in which the citation was issued.

History. Acts 2003, No. 1032, § 1; 2007, No. 663, § 55.

Publisher's Notes. For text of section effective until January 1, 2012, see the bound volume.

Amendments. The 2007 amendment substituted "town or city with a district" for "municipality with a municipal court or city" in the section heading; deleted former (b) and made related changes; and substituted "town or city" for "municipality" twice and deleted "or city" following "district" twice.

Effective Dates. Acts 2007, No. 663, § 56, as amended by Acts 2009, No. 345, § 7, provided:

"(a) Sections 2 through 15 of this act are effective January 1, 2008.

"(b) Sections 16 through 50 and 52 through 55 of this act are effective Janu-

ary 1, 2012.

"(c) Section 51 of Act 663 of 2007 is effective January 1, 2012, except:

"(1) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-933, establishing the Cleburne County District Court and departments of that court, codified as § 16-17-936 is effective July 1, 2009; and

"(2) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-950, establishing the St. Francis County District Court and departments of that court, codified as § 16-17-954 is effective July 1, 2009."

CHAPTER 89

TRIAL AND VERDICT

RESEARCH REFERENCES

ALR. Propriety of Use of Multiple Juries at Joint Trial of Multiple Defendants in State Criminal Prosecution. 41 A.L.R.6th 295.

16-89-104. Interpreters in criminal actions generally.

CASE NOTES

Compliance.

Trial court complied with the standards regarding certification for foreign language interpreters in Arkansas courts in this section and § 16-10-127 as the standards established by the Arkansas courts expressly permitted a non-certified interpreter upon a finding that diligent and good faith efforts to obtain a certified interpreter were made and none had been found to be reasonably available. Diligent efforts were made to obtain a certified interpreter, and although the trial court was advised that there were no certification programs for the Kiti language, defendant was able to obtain the services of the interpreter at issue, who was certified and had experience as a Marshallese interpreter and also spoke Kiti. Ludrick v. State, 2011 Ark. App. 54, — S.W.3d — (2011), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 170 (Mar. 2, 2011).

16-89-107. Trial of issues of law or fact.

CASE NOTES

Analysis

Jury Questions.
Questions of Law.

Jury Questions.

State inmate's federal habeas claim that the Supreme Court of Arkansas erred in rejecting his postconviction jury instruction argument because the Sixth Amendment right to present a complete defense included the right to have the credibility of a confession determined by the jury, and the jury had to be instructed on the issue was procedurally barred because it was not "fairly presented" to the appropriate state court, and further, the jury instruction claim lacked merit even if not procedurally barred because under subdivision (b)(1) of this section, voluntariness was decided by the court, not the jury. Rucker v. Norris, 563 F.3d 766 (8th Cir. 2009), cert. denied, — U.S. —, 130 S. Ct. 401, 175 L. Ed. 2d 275 (2009).

Questions of Law.

Pro se defendant's sufficiency of the evidence challenge was not preserved as he failed to make a motion for a directed verdict before a trial court. He did not request a jury nullification instruction, nor was he entitled to one as, under subdivision (a)(3) of this section, all questions of law were decided by the trial court. Bower v. State, 2010 Ark. 456, — S.W.3d — (2010).

Cited: Young v. State, 370 Ark. 147, 257 S.W.3d 870 (2007).

16-89-111. Evidence generally.

CASE NOTES

Analysis

Applicability.
Accomplice Testimony.
—Appeal.
—Corroboration.
Confessions.
Corpus Delicti Rule.

Applicability.

In a case in which a minor was adjudicated delinquent pursuant to a juvenile court's finding that he committed the criminal offense of misdemeanor theft by receiving, in violation of § 5-36-106(a), the minor unsuccessfully argued that a witness's testimony had to be corroborated. Since the minor had been charged with a misdemeanor, subdivision (e)(1) of this section did not apply. R.W. v. State, 2010 Ark. App. 220, — S.W.3d — (2010).

Accomplice Testimony.

Evidence was sufficient to corroborate accomplice testimony and to convict defendant of first degree murder and theft where, in addition to the testimony of defendant's wife, who was an accomplice, defendant's own statements to the police, his conduct before and after the crime, and statements of the victim's friends regarding her fear of defendant tended to connect him to the crimes; further, although there was no evidence that defendant ever drove victim's Cadillac or had the vehicle in his possession, the jury might have determined that defendant facilitated the theft by leaving the accomplice without a vehicle at the victim's house, and there was evidence that the theft of the Cadillac was part of the plan to murder the victim. MacKool v. State, 365 Ark. 416, 231 S.W.3d 676 (2006).

Trial court did not err by denying defendant's motion for a directed verdict on his capital murder conviction because the evidence was sufficient to support defendant's conviction of the underlying felony, aggravated robbery, even after eliminating the testimony of one of defendant's accomplices. Evidence showed that: (1) defendant had the purpose of committing a theft with the use of physical force, as he and three other individuals went to a witness's house to acquire ammunition for their firearm; (2) the fourth individual testified that defendant and three men arrived at his trailer where defendant displayed a gun, and that he provided ammunition for the gun; (3) a second witness, one of the three men who accompanied defendant, testified that he heard two gunshots fired after the two other men left the victim's apartment after the struggle between defendant and the victim ensued; and (4) the chief medical examiner testified that the victim died from a gunshot wound. Gardner v. State, 362 Ark. 413, 208 S.W.3d 774 (2006).

There was sufficient evidence to support convictions for aggravated robbery and capital murder based on defendant's admission that she held the victim's hands down while he was beaten inside an apartment during an alleged robbery and the testimony of an accomplice waiting outside; the accomplice testimony was sufficiently corroborated. Johnson v. State, 366 Ark. 8, 233 S.W.3d 123 (2006), appeal dismissed, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 251 (2007).

Evidence was sufficient to sustain defendant's kidnapping conviction where defendant's accomplice testified that defendant killed the victim, and an officer testified that defendant stated that the accomplice attacked the victim, knocked him down, taped him in a chair, and that the victim was "moaning" and "in a bad way" before he died; although there was a

discrepancy as to which individual attacked the victim, both statements pointed to defendant's involvement in the victim's murder. Holsombach v. State, 368 Ark. 415, 246 S.W.3d 871 (2007).

Because three of the state's witnesses were not charged as accomplices, and defendant neither requested that the trial court declare them accomplices nor proffered an accomplice jury instruction for the record, his argument that they were accomplices and that, without their testimony, the state would not have been able to prove its case, was not preserved for appeal. Boldin v. State, 373 Ark. 295, 283 S.W.3d 565 (2008).

Defendant's convictions for two counts of capital murder were appropriate because there was sufficient evidence to corroborate an accomplice's testimony under former § 43-2116; after eliminating the accomplice's testimony, other testimony still independently established the crimes and tended to connect defendant with their commission. Defendant's former wife testified that he was not home on the night in question, that a shotgun was missing, and that defendant told the wife's daughter that she would not have to return to her father's home; the father was one of the victims. Wertz v. State, 374 Ark. 256, 287 S.W.3d 528 (2008).

Where defendant's friend testified that defendant tried to rob the victim in his truck and shot him when he resisted, defendant's fingerprints were found on the truck and the blood on the gun matched defendant's DNA. Even if the friend was deemed an accomplice, there was sufficient corroborating evidence for purposes of this section to support defendant's conviction for capital murder. Bush v. State, 374 Ark. 506, 288 S.W.3d 658 (2008).

Defendant's convictions for capital murder and kidnapping were appropriate because a witness' testimony alone was enough to corroborate an accomplice's testimony against defendant, pursuant to subdivisions (e)(1)(A) and (B) of this section. Evidence showed that bullets found near the victims' bodies were fired from a .22 caliber rifle and a .38 caliber revolver and according to another witness, an individual wanted to buy a .38 caliber revolver from defendant; essentially, when all of the evidence was viewed in a light most favorable to the state, it tended to connect defendant to the commission of the crimes. Gilcrease v. State, 2009 Ark. 298, 318 S.W.3d 70 (2009).

Evidence was sufficient to sustain drug and firearm convictions because the testimony of defendant's wife that defendant bought the cocaine and that they were both involved in a drug-dealing operation was corroborated by other evidence that tended to connect defendant with possession of the drugs. Defendant not only was a co-owner of the car but he was driving it when he was stopped by the police for speeding, defendant admitted to the police that he was in possession of the loaded handgun that was in plain view and easily accessible to him at the time of the stop. Layton v. State, 2009 Ark. App. 96, 302 S.W.3d 610 (2009).

There was insufficient evidence corroborating the testimony of an accomplice to adjudicate a defendant as a delinquent juvenile because there was no substantial evidence that tended to connect defendant with the commission of the crime: there was no conclusive proof that the crime took place during the time alleged, defendant's location during this time was approximately a quarter of a mile away; other evidence established an extremely narrow window of time in which defendant could have committed the crime; and substantial evidence was also lacking with regard to defendant's association with the accomplice who had confessed to the crime in a manner suggestive of joint participation. Westbrook v. State, 2009 Ark. App. 723, — S.W.3d — (2009).

Substantial evidence supported defendant's convictions for commercial burglary, criminal mischief, and breaking and entering because the testimony of defendant's accomplice, who was defendant's son, was sufficiently corroborated, as required by subdivision (e)(1) of this section, by an officer's testimony as to the items he found in defendant's truck, matching the description of items stolen from a convenience store. The accomplice admitted that he and defendant entered the store by using a cable to pull open the front doors and that he and defendant used bolt cutters and a pry bar to break into gaming machines, and these items, along with packages of cigarettes stolen from the store, were found by police officers in defendant's truck. Dunlap v. State, 2010 Ark. App. 582, — S.W.3d — (2010).

Appellant's conviction for delivery of methamphetamine was affirmed because the jury was properly instructed that the witness's testimony must be corroborated and an officer and the witness both testified that the crime of delivery of methamphetamine occurred. Hall v. State, 2010 Ark. App. 717, — S.W.3d — (2010).

In a capital murder trial, a circuit court did not err in denying defendant's motion for directed verdict because there was sufficient evidence to corroborate an accomplice's testimony; even if the accomplice's testimony was eliminated, the testimony of a police officer and the victim's nephew was consistent with the accomplice's testimony of the events surrounding the murder, the testimony of several police officers established defendant was in possession of the murder weapon four days after the crime occurred, and the testimony of several law enforcement officials established defendant's flight from the vicinity of the crime, constituting corroboration of all the other evidence establishing defendant's guilt. Taylor v. State, 2011 Ark. 10, — S.W.3d — (2011).

In defendant's capital murder trial, the state provided sufficient evidence to corroborate the alleged accomplice's testimony pursuant to this section and, even if the accomplice's testimony was eliminated, the other evidence presented independently established the crime and tended to connect defendant with its commission. Taylor v. State, 2011 Ark. 10, — S.W.3d — (2011).

Defendant's convictions for aggravated residential burglary and aggravated robbery were appropriate because the state provided sufficient evidence to corroborate his accomplices' testimony; even eliminating the accomplice testimony, the remaining evidence presented independently established the crimes and tended to connect defendant with their commission, as required by subdivisions (e)(1)(A) and (B) of this section. In part, witnesses testified about defendant being with the accomplices on the day of the crimes and the state also presented a witness's testimony that defendant had sold him the three shotguns that were identified as being the ones stolen from the victim. Tucker v. State, 2011 Ark. 144, — S.W.3d — (2011).

Trial court did not err in denying defendant's motion for a directed verdict during a trial for first-degree murder as an accomplice because there was sufficient evidence under subdivision (e)(1)(A) of this section corroborating a codefendant's testimony that defendant hired the codefendant to murder his wife; two witnesses identified the murder weapon as a gun belonging to defendant. Camp v. State, 2011 Ark. 155, — S.W.3d — (2011).

Defendant's argument that he was convicted on the basis of the uncorroborated accomplice testimony of his wife contrary to subdivision (e)(1)(A) of this section was not preserved for review. Defendant's wife was never found to be an accomplice, and defendant failed to request that accomplice instructions be submitted to the jury for consideration. Bryant v. State, 2011 Ark. App. 348, — S.W.3d — (2011).

—Appeal.

Defendant was entitled to have the jury decide whether a state's witness was an accomplice whose testimony had to be corroborated pursuant to subdivision (e)(1) of this section and, if so, whether sufficient corroboration was proved; because the witness's testimony raised a question as to his accomplice status and the trial court refused to give a correct instruction permitting the jury to decide the question, the trial court committed reversible error. Torrence v. State, 2010 Ark. App. 225, — S.W.3d — (2010).

—Corroboration.

Trial court did not err in denying defendant's motion for directed verdict as there was sufficient evidence to support defendant's conviction of the underlying felony, aggravated robbery, and capital murder, after eliminating the accomplice testimony; other corroborating evidence demonstrated that defendant had the purpose of committing theft with the use of physical force, was armed with a deadly weapon, and caused the death of the victim and, further, a doctor testified that the victim died from a gunshot wound. Gardner v. State, 364 Ark. 506, 221 S.W.3d 339 (2006).

Circuit court did not err in denying defendant's motion for directed verdict where defendant never requested that the circuit court declare co-defendant an accomplice as a matter of law, nor did defendant ask that the circuit court give a jury instruction on the question of whether co-defendant was an accomplice as a mat-

ter of fact; therefore, defendant's accomplice-corroboration challenge was barred and the accomplice-corroboration principles of subdivision (e)(1) of this section did not apply. Price v. State, 365 Ark. 25, 223 S.W.3d 817 (2006).

Evidence was sufficient to sustain a conviction for possession of drug paraphernalia with intent to manufacture methamphetamine where an accomplice testified that defendant was inside his residence "cleaning up a cook" and "bagging everything up"; that testimony was corroborated by an officer who stated that, when he entered the home, defendant was in close proximity to the manufacturing items that were seized from the residence. Fitting v. State, 94 Ark. App. 283, 229 S.W.3d 568 (2006).

Evidence was sufficient to corroborate an accomplice's testimony and sustain defendant's capital murder and kidnapping convictions where the victim stole defendant's marijuana plants, defendant received a call shortly after the murders to go and help his son clean up a mess and defendant's nephew testified that defendant approached him and told him that if he ever said anything about the victim he would get hurt. Green v. State, 365 Ark. 478, 231 S.W.3d 638 (2006).

Evidence was sufficient to corroborate accomplice testimony and sustain defendant's drug convictions where defendant aided in the manufacturing process by providing matches and pills and by getting things for another participant during the cook; other independent evidence clearly showed that the crimes were committed given that the search uncovered a methamphetamine lab, and defendant was connected to the crimes given that he lived there, admitted to the police that he smoked methamphetamine, and told the police he provided ingredients for the cook. Eastin v. State, 97 Ark. App. 81, 244 S.W.3d 718 (2006), superseded, 370 Ark. 10, 257 S.W.3d 58 (2007).

Confessions.

Convictions for sexual assault were reversed because the state failed to carry its burden of proof where a defendant's confession to sexual assault of his stepdaughters was not made in open court and was not accompanied with other proof that the offenses were committed and where both victims denied abuse at trial. Goodsell v. State, — Ark. App. —, 289 S.W.3d 534 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 465 (Feb. 19, 2009).

Corpus Delicti Rule.

Because a defendant admitted to a battery in open court during a hearing on the state's petition to revoke defendant's suspended sentence, the rule of corpus delicti found in subsection (d) of this section did not apply. May v. State, 2009 Ark. App. 703, — S.W.3d — (2009).

Convictions for sexual assault were reversed because the state failed to carry its burden of proof where a defendant's confession to sexual assault of his stepdaughters was not made in open court and was not accompanied with other proof that the offenses were committed and where both victims denied abuse at trial. Goodsell v. State, — Ark. App. —, 289 S.W.3d 534 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 465 (Feb. 19, 2009).

Trial court did not err in convicting defendant of manslaughter in violation of § 5-10-104(a)(3) because the state presented sufficient evidence to corroborate defendant's confession when the evidence showed that the victim died hours after defendant admittedly went to his apartment, that the victim's apartment was in a state of disarray, which could have been interpreted as circumstantial evidence of a struggle, that blood was found in an area not in the immediate vicinity of where the victim ultimately passed away, and that the medical examiner would have ruled the victim's death a homicide had he known that he had been punched in the head five times; the corpus delicti rule, subsection (d) of this section, does not require the state to corroborate that the defendant committed the crime charged. It merely requires a showing that the crime occurred. Freeman v. State, 2010 Ark. App. 90, — S.W.3d — (2010).

When defendant was convicted of simultaneously possessing drugs and firearms, in violation of § 5-74-106(a)(1), defendant's statement to police that a gun found in defendant's wife's purse belonged to defendant was properly admitted, under subsection (d) of this section, because the statement was corroborated by circumstantial evidence that (1) defendant and defendant's wife were in defendant's

car, in which defendant's wife's purse was found, together when police pulled up behind the car, and (2) defendant fled the scene after police tried to arrest defendant upon finding a marijuana cigarette in the car. Patton v. State, 2010 Ark. App. 453, — S.W.3d — (2010).

Cited: Joiner v. State, 2010 Ark. 309, — S.W.3d — (2010).

16-89-122. Dismissal of indictment.

CASE NOTES

Nolle Prosequi.

Because a trial court's granting of the state's motion to nol-pros resulted in a final order of dismissal and the state could not perfect an interlocutory appeal after it had the case dismissed, the state's interlocutory appeal under Ark. R. App. P. Crim. 3(a) was dismissed. State v. C.W., 374 Ark. 116, 286 S.W.3d 118 (2008).

16-89-125. Deliberation of jury.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, The Deleterious Effects of Anderson and Flanagan on Section 16-89-125(e) of the Arkansas Code Annotated, 61 Ark. L. Rev. 551.

CASE NOTES

Analysis

Exhibits.
Noncompliance.
Papers.
Request for Information.
Strict Compliance.
Subsequent Instructions.

Exhibits.

In defendant's murder case, there was no violation of subsection (e) of this section where the circuit court allowed the deliberating jury to replay defendant's recorded statements outside the courtroom; giving the tapes in question to the jury did not create the possibility that evidence that was never introduced at trial might be introduced in the jury room. Flanagan v. State, 368 Ark. 143, 243 S.W.3d 866 (2006).

Noncompliance.

Although a violation occurred when the trial court answered questions from the jury without summoning it into open court, the state overcame the presumption that prejudice arose from the violation where the record showed that the proposed answers to the jury's questions were reduced to writing with agreement of defendant's counsel, and defendant's counsel did not argue on appeal that there was anything improper about their substance; further, the questions and answers were made part of the record and the trial judge did not enter the jury room when the written answers were delivered to the jurors. Clark v. State, 94 Ark. App. 5, 223 S.W.3d 66 (2006).

No one objected to a trial court's failure to answer a jury question regarding the meaning of concurrent and consecutive by bringing the jury back out, but rather debated and acquiesced in the trial court's written response. No abuse of discretion was shown in the trial court's written answer, and any error was not prejudicial. Frost v. State, 2010 Ark. App. 163, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 289 (Mar. 31, 2010).

Papers.

Sending a videotape to the jury after the jury requested a paper document did not violate subdivision (d)(3) of this section because subdivision (d)(3) did not limit exhibits that may be given to the jury during deliberations to papers and there was no danger of additional evidence being introduced by giving the exhibit during deliberations. Anderson v. State, 367

Ark. 536, 242 S.W.3d 229 (2006), cert. denied, Anderson v. Arkansas, 551 U.S. 1133, 127 S. Ct. 2973, 168 L. Ed. 2d 707 (2007).

Defendant's capital-murder conviction was appropriate because there was no error in the circuit court's decision to allow the jury to take a medical examiner's report with them into the jury room during deliberations, per subdivision (d)(3) of this section. The report was introduced into evidence during the trial, while defendant was present and represented by counsel. Jackson v. State, 375 Ark. 321, 290 S.W.3d 574 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 440 (Feb. 12, 2009).

Request for Information.

There was no violation of this section as the information played back to the jury had already been admitted into evidence and defendant did not suffer any prejudice by replaying the evidence. Jackson v. State, 2009 Ark. 336, 321 S.W.3d 260 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 586 (Sept. 10, 2009).

Strict Compliance.

There was compliance with this section in response to a note from the jury because the jury was returned to the courtroom and the communication with the jury was documented in the record. James v. State, 2010 Ark. 486, — S.W.3d — (2010).

Subsequent Instructions.

Even though defendant did not raise the propriety of a state's appeal under Ark. R. App. P. Crim. 3(c), the appeal was dismissed where the state did not present a proper issue for appeal when it claimed that a trial court erred in granting a new trial because there was no issue that concerned the correct and uniform administration of justice where the trial court's ruling turned on whether a bailiff, in fact, answered a juror's question. State v. Short, 2009 Ark. 630, — S.W.3d — (2009).

16-89-126. Verdict generally.

CASE NOTES

Cited: Basham v. State, 2011 Ark. App. 384, — S.W.3d — (2011).

16-89-128. Polling of jury members.

RESEARCH REFERENCES

ALR. Interrogation or Poll of Jurors, During Criminal Trial, as to Whether They Were Exposed to Media Publicity Pertaining to Alleged Crime or Trial. 55 A.L.R.6th 157.

CASE NOTES

Preservation for Review.

Defendant failed to effectively make an argument for application of an exception that would permit the court to address the issue regarding jury polling for the first time on appeal, plus the facts of this case did not present a situation of comparable seriousness as that presented in other case law; defendant failed to make a contemporaneous objection at the conclusion of the jury poll when the trial judge inquired if there was any reason not to release the jury and impose the sentence. Adams v. State, 2009 Ark. 375, 326 S.W.3d 764 (2009), rehearing denied, Adams v. State, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 556 (Sept. 10, 2009), cert. denied, Adams v. Arkansas, — U.S. —, 130 S. Ct. 1922, 176 L. Ed. 2d 392 (2010).

16-89-130. New trial.

CASE NOTES

Analysis

Grounds.
—Jury Misconduct.

Grounds.

—Jury Misconduct.

Inmate's claims regarding a juror's alleged untruthfulness during voir dire as to his feelings about the death penalty were not cognizable in inmate's postconviction proceeding; his remedy for alleged juror misconduct was to directly attack a verdict by requesting a new trial.Howard v. State, 367 Ark. 18, 238 S.W.3d 24 (2006).